

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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R. H. HERRON COMPANY, a Corporation,  
Appellant,

vs.

WILLIAM H. MOORE, Jr., Trustee in Bankruptcy of  
the CLEVELAND OIL COMPANY, a Corporation,  
Bankrupt,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for the  
Southern District of California, Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Citation.]

*In the District Court of the United States, Southern  
District of California, Southern Division.*

No. 686.

In the Matter of THE CLEVELAND OIL COM-  
PANY, a Corporation,

Bankrupt.

To William H. Moore, Jr., Trustee in Bankruptcy  
of the said Bankrupt, Cleveland Oil Company,  
a Corporation:

You are hereby cited and admonished to be and  
appear in the United States Circuit Court of Ap-  
peals, Ninth Circuit, at the city of San Francisco, in  
the State of California, on the 28th day of February,  
1913, pursuant to an appeal allowed and filed in the  
clerk's office of the District Court of the United  
States, Southern District of California, Southern  
Division, wherein R. H. Herron Company, a corpora-  
tion, is appellant, and you are appellee, to show  
cause, if any there be, why the decree rendered  
against the said appellant as in said appeal men-  
tioned should not be corrected and why speedy jus-  
tice should not be done the parties in that behalf.

Witness the Honorable OLIN WELLBORN,  
Judge of the District Court of the United States,  
Southern District of California, Southern Division,  
this 30th day of January, A. D. 1913.

OLIN WELLBORN,  
Judge of the District Court of the United States,  
Southern District of California, Southern Divi-  
sion. [5\*]

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\*Page-number appearing at foot of page of original certified Record.

[Endorsed]: No. 686. In the United States District Court, Southern District of California, Southern Division. In the Matter of the Cleveland Oil Company, a Corporation, Bankrupt. Citation. Filed Jan. 30, 1913. Wm. M. Van Dyke, Clerk. Virgil W. Owen, Deputy.

Received a copy of the within Citation 30 day of January, 1913.

HICKCOX & CRENSHAW,  
Attorneys for Trustee. [6]

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**Names and Addresses of Attorneys.**

For R. H. HERRON COMPANY:

GEO. E. WHITAKER, Esq., Stoner Block,  
Bakersfield, California.

For WM. H. MOORE, Jr., Trustee in Bankruptcy:  
HICKCOX & CRENSHAW, H. W. Hellman  
Building, Los Angeles, California. [7]

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**[Certificate and Report of Referee in Bankruptcy.]**

*In the District Court of the United States of the  
Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 686.

In the Matter of CLEVELAND OIL COMPANY, a  
Corporation,

Bankrupt.

To the Hon. OLIN WELLBORN, Judge of said  
Court:

I, Lynn Helm, Referee in Bankruptcy, in charge



of these proceedings, do hereby certify:

That in the course of said proceedings on the 22d day of May, 1911, the R. H. Herron & Company filed a proof of debt for the sum of \$14,808.32, founded upon four certain promissory notes made by said bankrupt attached to said claim and due respectively August 21, September 10, October 24, and November 15, 1910, and upon an open account for goods, wares and merchandise amounting to the balance of \$6,376.53, which proof of claim is returned herewith, together with an itemized account of said open account filed with said proof of claim on the 22d day of May, 1911.

That on the 23d day of August, 1911, William H. Moore, Jr., the duly elected and qualified trustee herein, filed objections to said claim of R. H. Herron & Company, which said objections are returned herewith. That afterwards said objections to said proof of claim came on to be heard, and after hearing the evidence produced on behalf of said claimant and said trustee in bankruptcy, the following order was made and entered on the 3d day of October, 1912:

[9]

*“In the District Court of the United States for Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 686.

In the Matter of CLEVELAND OIL COMPANY,  
a Corporation,

Bankrupt.

**Decree.**

WHEREAS an involuntary petition in bankruptcy was on the 12th day of January, 1911, filed against the above-entitled bankrupt, Cleveland Oil Company, a corporation, and said corporation was thereafter, to wit, on the 20th day of February, 1911, duly adjudicated a bankrupt upon said petition; and,

WHEREAS, R. H. HERRON & COMPANY did, after said adjudication, file a claim in the above-entitled estate for the sum of Fourteen Thousand Eight Hundred and Four Dollars and Thirty-two Cents (\$14,804.32), consisting of an open account for goods, wares and merchandise sold and delivered by said claimant to said bankrupt, amounting to Six Thousand Three Hundred and Seventy-six Dollars and Fifty-three Cents (\$6376.53), and the balance of principal and interest of Eight Thousand Four Hundred and Twenty-seven Dollars and Seventy-nine Cents (\$8427.79), as evidenced by four promissory notes made by said bankrupt, attached to said claim, and due respectively August 21, September 10, October 24, and November 15, 1910; and,

WHEREAS, the trustee in the above-entitled estate filed objections to said claim, and basing his objections upon the ground that said R. H. Herron & Company had received preferences from said bankrupt, and an order having been made herein that a hearing be had upon said claim, and said [10] objections on the 25th day of July, 1912, and due notice of said hearing having been given to said claimant and to said trustee, and said claimant having appeared by



counsel on said day, and testimony having been taken thereon, and after hearing L. O. Crenshaw, attorney for the trustee in support of said objections, and George E. Whitaker in opposition thereto, and the issues having been submitted on the 25th day of July, 1912, and the referee having heretofore rendered an opinion herein, which said opinion is on file, and it appearing to the satisfaction of the Court from the evidence, the Court finds:

That the above-mentioned bankrupt, Cleveland Oil Company, was on the 15th day of September, 1910, and prior thereto, insolvent, and was on the 31st day of October, 1910, and prior thereto, insolvent, and was on the 31st day of December, 1910, and prior thereto, insolvent.

That on the 15th day of September, 1910, which said day was within four months before the filing of the petition in bankruptcy herein, the said Cleveland Oil Company did pay and transfer to said R. H. Herron & Company the sum of Two Thousand Dollars (\$2000.00) in cash to apply upon a pre-existing debt which said bankrupt owed to said claimant.

That on the 31st day of October, 1910, which day was within four months before the filing of the petition in bankruptcy herein, the said Cleveland Oil Company did pay and transfer to the claimant R. H. Herron & Company certain oil well casing of the value of Two Thousand Eight Hundred and Twenty-three Dollars and Thirty-seven Cents (\$2823.37), said transfer to apply upon a pre-existing debt owed by said bankrupt to said creditor.

That on the 31st day of December, 1910, which said

day was within four months before the filing of the petition in bankruptcy herein, said Cleveland Oil Company did pay and transfer to the claimant R. H. Herron & Company two pumps, [11] of the reasonable value of Three Hundred Dollars (\$300.00), to apply upon a pre-existing debt owed by said bankrupt to said claimant.

That on the 15th day of September, 1910, and on the 31st day of October, 1910, and on the 31st day of December, 1910, and at the time said transfers were made, said R. H. Herron & Company was a creditor of said Cleveland Oil Company. That by said transfers made on said 15th day of September, 1910, on said 31st day of October, 1910, and on said 31st day of December, 1910, and by each of them, said Cleveland Oil Company intended to give said R. H. Herron & Company a preference. That the effect of said transfer made on the 15th day of September, 1910, said transfer made on the 31st day of October, 1910, and said transfer made on the 31st day of December, 1910, to the said R. H. Herron & Company, will enable said R. H. Herron & Company to obtain a greater percentage of its debt than any other of the creditors of the Cleveland Oil Company of the same class. That said bankrupt having intended to give preference as aforesaid the said R. H. Herron & Company at the time of receiving said payment on the 15th day of September, 1910, on the 31st day of October, 1910, and on the 31st day of December, 1910, and at each of said times, had reasonable cause to believe that it was intended thereby to give a preference.

As a conclusion of law from the foregoing, the Court finds that by reason of the law and the facts, the said transfer made on the 15th day of September, 1910, and the said transfer made on the said 31st day of October, 1910, and the said transfer made on the said 31st day of December, 1910, and each of them, was and were intended to be and was and were a preference, and that the objections of the trustee of said claim of R. H. Herron & Company should be sustained, and the [12] said claim should be disallowed, and that said claim should not be allowed unless said creditor R. H. Herron & Company shall surrender such preference.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED that said claim of R. H. Herron & Company, for the sum of Fourteen Thousand Eight Hundred and Four Dollars and Thirty-two Cents (\$14,804.32) be not allowed, unless said claimant shall surrender and pay to the trustee herein the sum of Five Thousand One Hundred and Twenty-three Dollars and Thirty-seven Cents (\$5,123.37), paid to it as a preference, together with interest on the sum of Two Thousand Dollars (\$2,000), at the rate of 7% per annum from the 15th day of September, 1910; interest on the sum of Two Thousand Eight Hundred and Twenty-three Dollars and Thirty-seven Cents (\$2,823.37), at the rate of 7% per annum from the 31st day of October, 1910, and interest on the sum of Three Hundred Dollars (\$300.00) at the rate of 7% per annum

from the 31st day of December, 1910.

Dated this 3d day of October, 1912.

LYNN HELM,  
Referee in Bankruptcy."

That on the 12th day of October, 1912, the said R. H. Herron & Company, feeling aggrieved with said order last aforesaid, filed a petition for review which was granted, and which is returned herewith.

That a summary of the evidence upon which said order was based, and my reasons for making said order, is found in the opinion which I filed upon the hearing of said claim on the first day of October, 1912, which opinion is as follows: [13]

That the questions presented on this review are, whether said order made by me on October 3, 1912, was correct or whether it was in error as assigned by the claimant in its petition for review.

FIRST: I hand up herewith for the information of the judge the following papers, the reporter's transcript of the testimony taken before me on the hearing of said claim, which with the exhibits hereinafter referred was all the evidence produced by either party before me on said hearing.

SECOND: I return herewith Claimant's Exhibits 1, 2, 3, 4, and Trustee's Exhibits 1, 2, 3, 4, 5, 6, 7.

Respectfully submitted,

LYNN HELM,  
Referee in Bankruptcy.

Dated October 14, 1912. [14]



*In the District Court of the United States, of the  
Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 686.

In the Matter of the CLEVELAND OIL COMPANY, a Corporation,

Bankrupt.

**[Referee's Opinion] upon the Claim of R. H. Herron  
& Co. and the Objections of the Trustee Thereto.**

GEO. E. WHITAKER, Esq., for Claimant.

Messrs. HICKCOX & CRENSHAW, for Wm.  
H. Moore, Jr., Trustee.

HELM, Referee.

Upon proof of debt of the R. H. Herron & Co., for the sum of \$14,804.32, consisting of an open account for goods, wares and merchandise sold and delivered by said claimant to said bankrupt, amounting to \$6,376.53, and the balance of principal and interest of \$8,427.79, as evidenced by four certain promissory notes made by the said bankrupt attached to said claim and due respectively, Aug. 21, Sept. 10, Oct. 24, and Nov. 15, 1910. Objections were filed thereto by Wm. H. Moore, Jr., trustee, to the effect that within four months preceding the filing of the petition in bankruptcy said claimant had received certain payments on account and had accepted certain transfers of property to apply on said account, with reasonable [15] cause for believing that a preference was intended to be given it thereby, and that said claimant had not surren-

dered said property or money so received by it.

The petition in bankruptcy herein was filed in this court on the 12th day of January, 1911, and thereafter on the 20th day of February, 1911, the said Cleveland Oil Company was duly adjudicated bankrupt, and on the 3d day of April, 1911, Wm. H. Moore, Jr., was duly elected trustee of said bankrupt and qualified as such.

At all times within four months preceding the filing of the petition in bankruptcy herein, said bankrupt was insolvent, that is to say, the aggregate of its property, exclusive of any property which it had conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay its creditors, was not at a fair valuation sufficient in amount to pay its debts. The schedule in bankruptcy herein showed that the said bankrupt was at the time of the filing of the petition in bankruptcy indebted on secured claims in the amount of \$103,271.02, and unsecured claims, \$34,234.61. The property which came into the hands of the trustee in bankruptcy, being property held by the bankrupt at the time of the filing of the petition in bankruptcy, did not exceed the sum of \$10,000, and that was entirely from oil that was produced on leases held by the bankrupt.

At the request of the stockholders on the 26th of October, W. P. Mushet, an expert accountant, commenced the examination of the books, accounts and affairs of the company and made a report thereon on the 21st day of November, 1910. The claimant's manager was not advised of this report until he saw

it published in a newspaper December 20, 1910. The report shows that September 30, 1910, the bankrupt's liabilities [16] amounted to \$57,529.06; in addition to this, there was a bonded indebtedness of \$100,000. Its assets consisted of oil properties and leases known as the California Kern, France Midway, the Volcan lease and the York Syndicate. On these there had been expended a large amount of money, but the leases had turned out to be of very doubtful value and went back and were forfeited to the lessees. The office furniture and fixtures cost \$770.92. These, with the exception of oil on hand, which was afterwards sold by the trustee, were all the available assets of the company. The financial condition of the bankrupt was practically the same at all times within four months of the filing of the petition in bankruptcy as it was at the date of said filing.

On the 15th day of September, 1910, and within four months preceding the filing of said petition in bankruptcy herein, the said bankrupt while insolvent, transferred and paid to said claimant, who was then and still is a creditor of said bankrupt, the sum of \$2,000 in cash to apply upon a pre-existing debt the said bankrupt owed to said claimant; afterwards, on the 31st day of October, 1910, said bankrupt, while still insolvent, transferred to said claimant, who was then and still is a creditor of said bankrupt, certain oil well casing of the value of \$2,823.37, the said transfer to apply upon a pre-existing debt owed by said bankrupt to said creditor; and afterwards, on the 31st day of December, 1910, said bankrupt while still insolvent, transferred to said claimant, who was then

and still is a creditor of said bankrupt, two pumps of the reasonable value of \$300 to apply upon the pre-existing debt owed by said bankrupt to said claimant, and the effect of each of said transfers hereinbefore mentioned was to give to said creditor a greater percentage of its claim than to other creditors of the same class. The bankrupt, [17] theretofore being insolvent, must be held to have given a preference to said claimant.

The intent of the debtor, in the absence of other proof, may be shown by its equivalent in law, proof of the inevitable result of the transaction, which in the case at bar was to give a preference and to create an unequal distribution of the bankrupt's estate. The bankrupt at the time of these payments and transfers of its property not only knew that it was insolvent, but it knew that it was so irretrievably so that it could not hope to continue its business without some sort of reorganization, and its officers knew it could not make the payment which it did without disparity in its payments to its other creditors. If the effect of the act was to create a preference, and such was its natural consequence, it must be presumed to have intended to do that which was the necessary result of its act. *Western Tie & Timber Co. vs. Brown*, 196 U. S. 502, 508.

Whether or not said claimant at the time it received said cash and property had reasonable cause to believe by said payment and transfers it was given a preference, is the only other question to be determined in this matter.



The bankrupt, the Cleveland Oil Company, was operating certain oil wells and properties in the Kern River field and in the Midway oil field at the time of the filing of the petition herein, and had been for a period of a year or more prior thereto. Commencing with about the 23d day of February, 1909, the claimant had sold and delivered to said bankrupt a large quantity of goods aggregating over \$20,000. For part of the indebtedness due from the bankrupt to the claimant on account of goods sold, notes had been given, four of which are in evidence herein, dated respectively May 23, May 9, June 9, and July 16, 1910, and aggregated \$12,726.68, which evidenced [18] goods purchased by the bankrupt of the claimant prior to July 1, 1910, and which were not paid for in cash. During July, 1910, goods were sold on open account amounting to \$3,547.23, during August, 1910, \$2,920.76, and during September, 1910, \$65.54, a total of \$6,533.53.

While the bankrupt had been a large purchaser during the months previous to September 1, 1910, claimant on the 21st of September had notified its several stores at Bakersfield, Taft and Maricopa in Kern County, that the bankrupt was only privileged to buy supplies for emergency requirements not exceeding \$50 in any one order, and if they wanted anything in excess of the emergency supplies, it was to be communicated to the Los Angeles office, where was the credit man of the claimant. Prior to that, on July 22, 1910, the managers of the stores of the claimant were advised that the state of the account with the Cleveland Oil Company was such that they

could only deliver goods to the Cleveland Oil Company in small quantities, not exceeding \$100, and anything in excess of that was to be referred to the Los Angeles office. On August 5, one of the managers of the claimant in the oil fields wrote the claimant that he was delivering goods to the Cleveland Oil Company in small quantities almost daily and wanted to be advised when the claimant expected a settlement from the bankrupt; that the amounts were not large, but exceeded the sum of \$100 named in their letter of advice of July 22d. On August 6 the claimant authorized its agents to deliver to the company 11,000 feet of 8 $\frac{1}{4}$  inch No. 28 casing, for the reason that the bankrupt had that day promised them to pay its equivalent in cash, and it then paid claimant \$1,500.

Notwithstanding the reiterated testimony of Mr. Sands, the general manager and treasurer of the claimant and who acted as its credit man, that he did not know, when he received the [19] payment of \$2,000 from the bankrupt on September 15, 1910, or on the 26th day of October, when he authorized his manager to accept a return of certain oil well casing for which credit was given on the 31st of October, or at the time the two pumps were returned November 25, 1910, that the bankrupt was insolvent, and that he had no reason to believe that any preference was intended to be given to the claimant R. H. Herron & Co., the testimony shows that he had reasonable cause to believe that the bankrupt was giving to the claimant a preference.

It was not necessary that the claimant should have

had knowledge that the preference was intended, nor was it necessary that he should believe that a preference was intended; it was only necessary that he should have had a reasonable cause to believe that a preference was intended, which is far different. This exists, according to the accepted doctrine, where the surrounding circumstances were such as to put a person of ordinary business intelligence upon inquiry or to induce the belief that he is given more than other similar creditors. Notice of facts that would incite a man of ordinary prudence to inquiry under similar circumstances is notice of all the facts which a reasonably diligent inquiry would disclose. In *re Eggert*, 102 Fed. 735; *Stuart vs. Farmers-Merchants' Bank of Cuba City (Wis.)*, 21 Am. B. R. 403; *Grant vs. Bank*, 97 U. S. 80; *Bank vs. Cooke*, 95 U. S. 343; *McElvain vs. Hardesty*, 22 Am. B. R. 320; *Wright vs. Sampter*, 18 Am. B. R. 355; *Wright vs. Skinner Manufacturing Co.*, 20 Am. B. R. 527; In *re Goodhile*, 130 Fed. 471; *Sundheim vs. Ridge Avenue Bank*, 15 Am. B. R. 132; In *re Virginia Hardwood Mfg. Co.*, 15 Am. B. R. 135; In *re Dorr*, 196 Fed. 292; *Collier on Bankruptcy*, 9th Ed. 815, and cases cited.

The bankruptcy act has added a new and very serious limitation upon the freedom of business intercourse. Any act, however, in the ordinary course of business, by which a merchant [20] pays a debt is liable to be reviewed and rescinded, if it happens within four months thereafter the debtor becomes bankrupt.

The claimant in the testimony given by its man-

ager and in the letters by it produced upon the hearing has furnished the evidence from which it must be found that the claimant had reasonable cause to believe, when it received the payment made to it and the property transferred to it, from the bankrupt, that it was receiving a preference over other creditors of said bankrupt.

At the time that the oil well casing was delivered by the bankrupt to the claimant, about the last of October, 1910, Mr. Sands, on behalf of the claimant, insisted upon a payment being made upon the account. The claimant had a guarantee from W. A. France, President of said Cleveland Oil Company, that he would be responsible for the account, and Mr. Sands was threatening to call upon him for a payment. He had been at the office of the company two or three times and they had been down to see him, and finally Mr. Edson France, the vice-president of the bankrupt company, and a brother of W. A. France, went down to see Mr. Sands and told Mr. Sands that they did not have any money to pay on account of the notes which were overdue, but that they had some piping and casing which they had bought of the claimant at the oil fields which they would return. Mr. Sands said he would take it and give the bankrupt credit therefor at 75 cents on the dollar for what they paid for it. This was a fair price for second-hand casing in the field. It was not unusual for oil supply dealers to take back at a discount casing which they had sold to oil companies operating in the oil fields. It was quite frequently done and 25% was the usual discount. So far as Edson



France knew, Mr. Sands did not go into the financial condition of the company, and Mr. Sand's own testimony shows that he did not. Mr. Sands, however, wrote [21] October 18, 1910, to his district manager at Taft, as follows: "The Cleveland Oil Company owe us considerable money and they are not in position to supply the ready cash. Their stock is almost worthless from a stock market view, the last sales being passed at  $23\frac{3}{4}$  cents. They are endeavoring to arrange the company on a good financial basis, but that will take some time. They have arranged to deliver us a string of 10" No. 40 casing on the well they are drilling in the midlands, and we have promised to give them credit when delivered to our stock at Moron, at list less 25%." The proposition to return the goods came from Mr. France and Mr. Sands agreed to it, saying if he would take it back to the store, the claimant would give credit on the account. The only reason that was given for Mr. France offering to return the goods is that he told Mr. Sands that they did not have any cash on hand at the time, and that they were willing to return the casing. At that time the company owed a great many other debts, but a similar offer was not made to any other creditors. Mr. France told Mr. Sands that they did not have any money in the treasury, but they had some oil in storage in the Kern River field and expected to sell that and get some money. There had been a fire in the refinery of Warren Bros., where the bankrupt refined its oil, and the bankrupt had about 10,000 barrels of oil in storage which could not be refined, and Mr. France told him as soon as they

could get some money out of it they expected to pay a part of the indebtedness, that they expected to make a payment on account and also on the notes. Mr. Sands was told that the property at that time was not producing sufficient to pay more than certain small debts and labor claims.

At the time the \$2,000 was paid, September 15, 1910, nothing was said, but there is testimony that this \$2,000 was paid on account of a promise made when additional goods were [22] sold by the claimant to the bankrupt August 6, 1910, on account of an immediate payment promised. The money was paid in the ordinary course of business and no conversation took place between the officers of the claimant or officers of the bankrupt in reference thereto.

Prior to this, however, facts had been brought to the knowledge of the claimant that were sufficient to have put a reasonably intelligent person upon inquiry.

The general manager of the company knew as early as February 18, 1909, what were the Cleveland Oil Company's holdings in the Kern River field. He was advised by one of his district managers, on whose information he relied, that they were about to commence operation upon 10 acres in section 8-29-28, known as the York Syndicate property, and also upon 17½ acres in the same section known as the Volcan property, and they were endeavoring to secure other property. At that time the Volcan had one producing well and the York Syndicate two wells. Mr. Sands had been by the property at another time in the Kern River field and testifies that

they had quite a number of wells dug there; that they seemed to be in a very prosperous condition and they were all in where there were producing oil wells, and in addition to that at that particular time the company had a lease on what was considered valuable oil land in the midway next to the Buick Oil Company. December 23, 1909, he knew from Dr. France, the president of the company, that they had eight producing wells and were getting from 8,000 to 10,000 barrels of oil per month.

January 11, 1910, the claimant by its treasurer notified the Oil Well Supply Company at Taft, Cal., that it was privileged to deliver the Cleveland Oil Company supplies to the amount of \$1,500, but for anything in excess of that amount they would communicate with the Los Angeles office. The treasurer [23] says: "They are owing us considerable money and they have not acquired the habit of discounting their bills, which is our reason for the limited credit."

It is no doubt true that credits are often determined under conditions of the account at the time the requisitions are demanded. On January 21, 1910, the treasurer notified the Oil Well Company at Bakersfield, Moron, Maricopa, that the amount of the open account of the Cleveland Oil Co. was \$4,819.58, and that they owed a note due February 28, for \$2,055.42, and another due February 15th, for \$6,617.16, and that they felt that this was quite enough, provided the information which was given them by their district manager at Bakersfield the other day was correct; that they were owing considerable sums for lumber bills and there were other

creditors for other small bills who were not able to get their money; and the letter requested a report from each representative of the company in his district as soon as possible to tell them as regards their holdings, and in the meantime permitting them to make deliveries amounting to \$1,000 for all three stores of the claimant. On August 5, 1910, the Oil Well Supply Company, with which the claimant is affiliated, wrote to the treasurer above named that they were delivering goods to the Cleveland Oil Company in small quantities daily since a telephone communication between the manager at Bakersfield and the treasurer a few days previous, when they were advised that the treasurer expected a settlement from the Cleveland Oil Company. August 6, 1910, the bankrupt owed the claimant almost \$20,000, and the manager at Bakersfield was notified by Mr. Sands to communicate with him before delivering them any great amount of goods.

On the 22d day of August, they were advised that the refinery of Warren Bros. in the Kern River fields, which was operated for the benefit of the Cleveland Oil Company, was destroyed '[24]' by fire. The secretary of the claimant wrote Mr. Sands as follows: "Had a talk with Mr. Batchelder of the Cleveland Oil Company this morning. It seems that their refinery in the Kern River field burned down Saturday and that they are having trouble in raising the \$1,700 necessary for the 1000 feet 8-inch casing for the Kern River field. It seems that the National sent them a car of 8 $\frac{1}{4}$ " to the Midway field and by mistake their superintendent unloaded it and hauled



it out. You know we gave them 1000 feet there and the result is that they have 2000 feet too much in the Midway field, and have none in the Kern River. They have not taken care of their note due to-day. We are simply giving you this information that you may be in touch with the matter." Mr. Sands endorsed upon this letter a most singular notation, to wit: "Keep after them at least twice a day; make them come through." In common parlance, this, even for a credit man, was "going some," and after information which caused him to give directions to keep after a debtor at least twice a day and make it come through, it would be hard to say that he did not have reasonable notice to put him upon inquiry.

It is true that the account between the Cleveland Oil Company and R. H. Herron & Co., the claimant, was active prior to August 1, 1910. Of the credits given during August, \$1,686.32 was due to the payment of \$1,500 on August 6. There were practically no credits extended to the company during September, and none after October 1st. Upon the notes offered in evidence there were no payments made, except the \$2,000 of September 15th, and the \$2,823.37, less interest, which was credited October 31st of casing returned as aforesaid, the payments here in question. The notes as received from the Cleveland Oil Company were endorsed and discounted by the claimant at its bank. The Cleveland Oil Company did not pay the note due August 21, amounting to \$2,868.15, and the claimant had to take up that note [25] at the bank, and it was overdue and unpaid at the time of the giving of the preference here in

question. The claimant was advised that the Cleveland Oil Company did not have the money at that time to protect the note, and they have as an excuse that they had been disappointed in not receiving it in time. At the time they made the payment of \$2,000 they had been promising the claimant cash for several weeks.

It is probably true that the claimant did not fully investigate the question of the bankrupt's solvency or insolvency because the claimant was satisfied with the guarantee, which it had received from Dr. W. A. France, the president of the company, whom Mr. Sands was advised was financially responsible, that he would see that all claims of the Cleveland Oil Company to R. H. Herron Co. would be paid. If, however, they had made a reasonably diligent inquiry—which they were reasonably bound to have made—it would have disclosed the fact that the Cleveland Oil Company was insolvent at the time the payments, which are in question in this matter, were made to the claimant, and that the claimant was receiving a preference over other creditors.

In *Re Deutschle*, 25 A. B. R. 348, 182 Fed. 435, it appeared that within four months prior to bankruptcy, payments had been made by the bankrupt on notes for a lumber account which had frequently gone to protest and been the subject of constant complaint. Notwithstanding this, the claimants had accepted an order for more lumber, and were about to fill it, when they learned that the bankrupts were in difficulty and did not do so. They were also advised, on inquiry of a bank where the bankrupts were in

*Case 66-100  
1st Nat. Bank  
Cleveland, Ohio*

business, that their condition had improved, and it was thought that they would pull through. It was held that this suggested critical embarrassment was enough to put claimants on inquiry, and that their claim for the balance [26] due on the notes could not be allowed without surrendering the payments received during the four months' period, which constituted voidable preferences.

See, also, *In re Leader*, 26 A. B. R. 668.

It is established by the Bankruptcy Act, sec. 57c, that the claims of creditors who have received preferences voidable under sec. 60, subdiv. b, shall not be allowed, unless such creditors shall surrender such preference.

The allegations of the objections to the claim of the claimant herein are true, and for the foregoing reasons the objections to the claimant filed herein must be sustained and the claim disallowed, unless said claimant shall surrender the preferences aforesaid.

LYNN HELM,  
Referee.

[Endorsed]: No. 686. In the United States District Court, Southern District of California, Southern Division. In the Matter of Cleveland Oil Co., a Corporation, Bankrupt. Referee's Opinion upon Claim of R. H. Herron & Co. and the Objections of the Trustee Thereto. Filed Oct. 1, 1912, at 10 o'clock A. M. Lynn Helm, Referee. Lynn Helm, Los Angeles, Cal., 918 Title Ins. Bldg.

[Endorsed]: No. 686. In the United States District Court, Southern District of California, Southern Division. In the Matter of Referee's Report on Petition for Review in Re Cleveland Oil Company, a Corporation, Bankrupt. Filed October 22d, 1912, at 40 min. past 9 o'clock A. M. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy Clerk. Lynn Helm, 510 Los Angeles Trust Building, Los Angeles, Cal. [27]

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*In the District Court of the United States, in and for the Southern District of California, Southern Division.*

No. 686.

In the Matter of the CLEVELAND OIL COMPANY, a Corporation,

Bankrupt.

**Transcript of Testimony on Hearing on Claim of R. H. Herron Company.**

Before Hon. Lynn Helm, Referee, at his office, Room #918 Title Insurance Building, Los Angeles, California, on the 24th day of July, 1912.

Messrs. HICKCOX & CRENSHAW, Attorneys  
for Trustee.

GEORGE E. WHITAKER, Esq., Attorney for  
R. H. Herron Co.

Filed Sep. 4, 1912, at — o'clock — M. Lynn Helm, Referee. [28]



*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

No. 686.

In the Matter of the CLEVELAND OIL COM-  
PANY, a Corporation,

Bankrupt.

Messrs. HICKCOX & CRENSHAW, Attorneys  
for Trustee.

GEORGE E. WHITAKER, Esq., Attorney for  
R. H. Herron Company.

Los Angeles, Cal., July 24, 1912.

Ten o'clock A. M.

**[Testimony of Edson France, for the Trustee.]**

EDSON FRANCE, a witness produced on behalf  
of the trustee, being first duly cautioned and solemnly  
sworn to testify the truth, the whole truth and noth-  
ing but the truth, testified as follows:

Direct Examination.

(By Mr. CRENSHAW.)

Q. You were an officer of the Cleveland Oil Com-  
pany during the fall of 1910?

A. Yes, part of 1910; from about the middle of  
July.

Q. From the middle of July until when?

A. Well, I don't know whether I was an officer or  
not—

Q. You were an officer of the company as long as  
it existed? A. Yes, sir. [29]

Q. You prepared the schedule of debts and assets

(Testimony of Edson France.)

of the company which are on file?

A. No, I didn't prepare anything—that is, I didn't prepare it.

Q. You seem to have signed it.

A. I probably looked it over and signed it; that is all so far as I remember.

Q. How did you arrive at the assets and liabilities?

A. Well, I suppose it was mostly from memory.

Q. (By the REFEREE.) Well, was it from the books of the company or anything like that?

A. I don't know whether we had the books at that time.

Q. What is the date of it?

A. What is the date of it?

Q. It was filed on the 20th of January.

A. Yes, I suppose it was taken from the books.

Q. No—it was prepared after that, on the 16th day of March. Do you know whether or not it was compiled from Mr. Mushet's report?

A. I don't know whether it was prepared that way or not.

Q. It is a correct statement of the assets and liabilities, is it?      A. Yes, sir.

Q. Between the 16th day of March, 1911, and the 12th day of September, 1910, was there any material change in the assets and liabilities of the company?

A. Not to my knowledge, there were no changes.

Q. There was no new property acquired during that period? [30]      A. No.

Q. None of your property disposed of during that

(Testimony of Edson France.)

period?      A. Not to my knowledge.

Q. Were you operating during that period at all?

A. Part of the time, the first part of the time.

Q. How long after the 12th of September were you operating?

A. Up until we went into bankruptcy. I don't know how long.

Q. (By the REFEREE.) From the 12th of September that fall, did you operate up to the first of January?

A. Yes, they were operating up in the Kern River field.

Q. They were operating in the Kern River field from the 12th of September to the 1st of January?

A. No, that was 1910.

Q. (By the REFEREE.) In 1910 you were operating?      A. Yes, sir.

Q. In 1911 you did not?

A. From the first of September, 1910, to the first of January, 1911, you see, the order of adjudication was made.

Q. (By the REFEREE.) That is it. From the first of September, 1910, to the first of January, 1911, were you operating during that time?

A. Yes, sir.

Q. What was the nature of your operations during that time?

A. Producing some oil in the Kern River field.

Q. Were you drilling any wells?

A. Not at that time that I remember. [31]

(Testimony of Edson France.)

Q. Did your production take care of your operation?

Mr. WHITAKER.—That is objected to on the ground that it is not the best evidence and further that it calls for the conclusion of the witness.

The REFEREE.—Objection sustained.

Q. Could you tell by examining the books as to what was the cost of production?

A. I could not. I am not very familiar with the books, and I was never financially interested with the Cleveland Oil Company, I was simply put in to fill a vacancy for a short time and never have been to the oil fields and don't know very much about it.

Q. Who were familiar with the books?

A. Mr. Batchelder was secretary. I was just put in to fill this vacancy and I never got very much knowledge about it. I have not seen the books for a year, I think, and that is the reason I have forgotten.

Q. Are you acquainted with the R. H. Herron Company?     A. Yes, with Mr. Sands.

Q. Did your company have dealings with R. H. Herron Company during 1910?     A. Yes, sir.

Q. And become indebted to them?

A. Yes, we bought goods of them right along.

Q. Do you remember when you ceased to buy goods from R. H. Herron Company?

A. No, I could not give you the date, probably in July, 1910, somewhere along there, maybe a little later. [32]

Q. That time you were indebted to them?



(Testimony of Edson France.)

A. Yes, sir.

Q. Did you say Mr. Sands was their representative with whom you did business?

A. Yes, I talked to Mr. Sands several times.

Q. Did you ever do business with any other officer of the Herron Company?     A. I did not.

Q. During the months of August and September did you have any conversation with Mr. Sands with reference to the account of R. H. Herron Company with the Cleveland Oil Company?

A. I don't think so at that time. Judge Campbell was president of the company during that time, but I talked to Mr. Sands a little later.

Q. About what time?

A. About October or November, I have forgotten the date, somewhere in there.

Q. What was the nature of the conversation?

Mr. WHITAKER.—We object to that; we object to any conversation which took place between the witness on the stand and Mr. Sands during the month of November, 1910, on the grounds that the objection to this claim being allowed relates to a later period—I will withdraw that, I see there is one item in December.

(Question read by Reporter.)

A. Why, it was in regard to paying the bill we owed Mr. Sands; making payment on the account, and the notes.

Q. Well, can you detail those conversations, what was said by you and what was said by Mr. Sands?

(Testimony of Edson France.)

A. Well, Mr. Sands said he had to have some money on account, on some notes which were due, and at that time I told Mr. Sands that we didn't have any money, but we had some piping and things which we bought of him at the oil fields which we would return. He said he would take them and give us credit, I think, for 25 per cent less than what we paid for it, something like that.

Q. Did Mr. Sands ever go into the financial condition of the company with you?

A. I don't think that he did.

Q. He never asked you about how the company stood, what its obligations were, or what its assets were?

A. I don't remember. I presume he had found that out before that.

Q. Prior to October or November did you ever give him any statement?

A. I don't remember of giving him any statement.

Q. When were those notes given?

A. At different times. I could not tell you.

Q. Do you know of any other occasion of giving the notes except the carrying of this account as an open account?

A. I don't know very much about it.

Q. You don't know why it was done?

A. When they could not pay their bill when it was due, they gave a note, as I understand.

Mr. WHITAKER.—If you know how to answer of your own knowledge, state it; not otherwise.

The WITNESS.—Well, the fact is I don't know

(Testimony of Edson France.)

anything about it except what the books show, and I didn't keep the books. [34]

Mr. CRENSHAW.—Are those notes on file here?

The REFEREE.—Yes, right here.

Q. Who are they signed by?

A. They are signed Cleveland Oil Company by W. A. France, President, and W. J. Batchelder, Secretary. There are different dates on them here.

Q. Now, Mr. France, when you had this conversation, which you say was sometime in October or November, with Mr. Sands, and told him that you could not pay him the account, and that he would have to take back some of the old machinery if he got anything, what did he say?

Mr. WHITAKER.—We object to counsel stating facts not shown by the testimony. The witness never testified he told Mr. Sands the Herron Company would have to take back any machinery or they would not get anything. That is not the testimony. I want this record correct.

The REFEREE.—Objection sustained.

Q. Well, at the time of this conversation that you have related, where were you?

The REFEREE.—The witness stated he didn't have any money—

Mr. CRENSHAW.—He told him he couldn't pay it, I believe he said.

Mr. WHITAKER.—That is correct.

Q. What did Mr. Sands say when you told him that you could not pay him?

A. He said he would take it back.

(Testimony of Edson France.)

Q. How did he happen to say he would take it back?

A. I made a proposition to him that we would return it to him. He said if they took it back to his store they would [35] give us credit on the amount.

Q. How much?

A. I don't remember the amount. I suppose it was \$2,000 or \$2,500, somewhere along there.

The REFEREE.—You didn't understand that question. You said less—

Mr. CRENSHAW.—Yes, I understood him to say “less 25 per cent of what they bought it for.”

The WITNESS.—Yes.

Q. (By the REFEREE.) And you returned him about \$2,000 worth?

A. At the time, about \$2,000, and I think there was some returned a little later than that. He would not give us credit for the full amount on account of the pipe having been used. It was what they called second-hand, you know, if I remember, he said he would give us credit for the amount we paid, less twenty-five per cent.

Q. Did Mr. Sands know anything about whether the machinery was being used? A. I don't know.

Q. Did you tell him?

A. I could not say whether I did or not.

Q. Did you make any statement to him as to why you wished to return it to him?

A. I told him that we did not have any cash on hand at the time, and that we would have to do that.

(Testimony of Edson France.)

Q. Did you take this machinery and pull it out of the hole in order to return it to him?

A. It was there on the ground, I understand; I understand [36] it was piping up there which was not being used.

Q. Had it been used?

A. I could not say whether it had been or not.

Q. Well, did you tell him if it had been used or had not been used?

A. I don't think I told him either one, I don't know whether he knew or not.

Q. About the month of September was there a committee appointed by the stockholders for the purpose of going over the affairs of the Cleveland Oil Company—an expert accountant?

Mr. WHITAKER.—Objected to on the grounds that the books are the best evidence.

The REFEREE.—Objection overruled.

Mr. WHITAKER.—Exception.

A. I think it was in September.

Q. Who was the expert? A. Mr. Mushet.

Q. Do you know whether or not he made an examination of the books and affairs of the company?

A. He did.

Q. Was Mr. Sands around the office at any time, if you remember, while that report was being made?

A. I never saw him around there, I never heard them say anything about looking into the report.

Q. Do you know whether or not he was familiar with the fact that investigation was being made by the stockholders? A. I don't know.



(Testimony of Edson France.)

Q. He never said anything to you about it? [37]

A. No, he never mentioned it.

Q. Do you remember the date that you, as an officer of the Cleveland Oil Company, became involved with the Federal authorities?

Mr. WHITAKER.—We object to that as incompetent, irrelevant and immaterial for the purposes of the hearing before the master and referee.

Mr. CRENSHAW.—The purpose is simply to show the date, and then I want to ask the witness if Mr. Sands knew anything about that.

The REFEREE.—I think it is a proper question. Objection overruled.

Q. What do you know about the date?

A. It was in the last of December or first of January. Somewhere around in there.

Q. (By the REFEREE.) December, 1910?

A. December, 1910.

Q. Well, did you ever see Mr. Sands about that time with reference to the affairs of the Herron Company?

A. I don't remember seeing him after that time. I don't have any knowledge of talking with him.

Q. Do you know anything about the market price of the stock of the Cleveland Oil Company, during the summer of 1910 and the fall, as listed on the exchange?

A. I could not give you any figures now.

The REFEREE.—Answer yes or no.

A. No, I could not give any exact figures.

(Testimony of Edson France.)

Q. Do you know approximately what the figures were?

MR. WHITAKER.—We submit, Mr. Referee, that the market [38] report would be the best evidence.

The REFEREE.—He could not state what they were, but just state yes or no. If you know what those quotations were say “yes” or if not, say “no.”

A. No, I do not.

Q. Do you know what the stock was selling at in September, 1910, on exchange? A. No.

Q. Do you know what it was selling at in November? A. No.

Q. Are you able to identify the books of the Cleveland Oil Company? A. Yes.

Q. Will you look these over, the journal and the ledger?

(Counsel produces books.)

A. I can't identify this one here. (Witness indicates.)

Q. What does that purport to be?

A. It says “Cash-book.” I am not very familiar with the books. That one there (indicating) I don't remember seeing before.

Q. Well, is this the ledger?

A. Yes, these two ledgers, I remember those.

Q. Does this ledger here contain that Herron Company account? Will you turn it over and see?

A. Yes, it is right here (indicating).

Q. Can you tell by looking at this account of R. H. Herron & Company when the last credit was given to

(Testimony of Edson France.)

the Cleveland Oil Company?

Mr. WHITAKER.—I don't wish to be technical, but here is [39] a witness on the stand who has testified that he had nothing to do with the books, that they were kept by Mr. Batchelder; any outsider could tell when the last credit was made but the only person who could state whether that credit is on the true date or not is the person who kept those books, or under whose supervision they were kept.

Mr. CRENSHAW.—In view of the fact he is president of the company if he testifies he can do it—

The REFEREE.—He didn't say he could do it.

Mr. CRENSHAW.—I asked him if he could.

A. I could not.

Q. Now, isn't it true, Mr. France, that part of this last credit was given by the R. H. Herron Company which appears as of December 31st, the sum of \$300.00—I think it was a pump or some such machinery—

A. Two pumps.

Q. Isn't it a fact that those were returned after the time at which you became involved with the Federal authorities?

A. I think not. I should say no.

Q. Well, you are positive that no action was taken, or no arrests made of the officers of the Cleveland Oil Company until after January first?

A. I could not give you the dates.

Q. The question was December 31st.

A. I could not say what the date was, as I can't remember it, but it was the latter part of December or the first part of January. I have not thought

(Testimony of Edson France.)

about it for several months and I have forgotten.

Q. How many times did you see Mr. Sands during October and [40] November?

A. Oh, a few times; probably three or four times.

Q. Whereabouts did you see him?

A. I was at his office a few times, and then he was in our office, probably once or twice.

Q. What was the occasion of your going down to his office?

A. I was down to explain why we didn't pay him some money he had demanded.

Q. How strongly did he demand it?

A. He simply insisted he had to have it.

By the REFEREE.—What explanation did you give?

A. I told Mr. Sands we did not have any money at that time; that we had some of this piping up on the oil fields which we would turn over to him if he would take it.

Q. Well, at the time that you were having these conversations with Mr. Sands the company was in pretty bad shape financially, was it not?

Mr. WHITAKER.—We object to that as incompetent, irrelevant and immaterial, not binding upon the respondent to this citation and objection, unless it is shown to have been within the knowledge of the respondent, the R. H. Herron Company, the fact that is, that knowledge would not bind this defendant, or give him any grounds to believe that any preference was intended.

The REFEREE.—If the company was not insolv-

(Testimony of Edson France.)

ent there would not be any preference on the part of the company. Now, in order to determine the first question it may be shown whether the company itself was insolvent, if it was insolvent it might be deemed to have given a preference, but the [41] next question is, whether it was taken with the reasonable cause to believe that they were insolvent. The question is competent for the purpose of showing the first question, it is material to that extent. You may answer the question.

(Question read by Reporter.)

A. I would not consider it in very bad shape.

Q. Well, didn't you testify here a short time ago that there was practically no change in the assets and liabilities? A. I did.

Q. Well, do you consider your company in a bad shape by this schedule that you made out?

Mr. WHITAKER.—That is objected to as calling for a conclusion of the witness.

The REFEREE.—Objection sustained.

Q. How many times did you go down to Mr. Sands' office? A. Oh, two or three times, I think.

Q. What did you tell him when you went down there?

A. I went down to see Mr. Sands because he demanded money from us and I told him that we didn't have any money at that time, and I told him about the pipe that we had upon the Midway field, we would return to him.

Q. That was a voluntary suggestion on your part that you would turn back the pipe?



(Testimony of Edson France.)

A. Yes, it was.

Q. Did you put any price on it?      A. No, sir.

Q. You were willing to take whatever he would give you?

A. Any fair price, anything that was reasonable.

Q. Well, at that time you owed a great many other debts [42] beside to R. H. Herron & Company, did you?      A. Yes, sir.

Q. And did you make a similar offer to any of the other people?      A. We did not that I know of.

Q. You didn't offer to give them any part of this pipe or pumps?      A. No.

Q. Were they after their money?

A. Some of them were; yes.

Q. Did any of them sue you for their money about that time?

A. I think there was a suit somewhere about that time by somebody but I don't remember who it was.

Q. Isn't it a fact that the Alexon Machine Company sued you about that time?

A. That was a little later, if I remember right.

Q. How much later?      A. I could not say.

Q. Isn't it a fact that in the later part of November that they brought a suit against you and had the sheriff in charge of your office for a couple of days?

Mr. WHITAKER.—We object to that as not binding on this respondent, and upon the further grounds that the record is the best evidence that the suit was brought.

Mr. CRENSHAW.—I want to show that the man was in charge.

(Testimony of Edson France.)

The REFEREE.—Answer the question.

A. I could not give the date, but a suit of that kind was brought. [43]

Q. That was before December 31st, was it not?

A. I don't remember the date, I think it was.

Q. Did Mr. Sands at any time intimate to you that he knew what was the condition of the Cleveland Oil Company? A. He did not.

Q. Did he ever threaten to sue the company?

A. Not to my knowledge.

Q. What made you so anxious to go down and see Mr. Sands and make a settlement with him that you should go down to his office on several different occasions and offer him this pipe back?

Mr. WHITAKER.—That is objected to on the grounds that it has been asked already several times and answered.

The REFEREE.—Objection overruled. Answer the question, subject to the objection—what was the reason for your anxiety in going down to see Mr. Sands.

A. Well, my brother being connected with the oil company, Mr. Sands said he was going to try to collect of my brother, W. A. France.

Q. He said he was going to collect it from your brother? A. Yes, sir.

Q. How did he say he was going to try to collect it from your brother?

A. Well, he said my brother said he was going to see that the bill was paid.

Q. Did he say why he was going to look to your

(Testimony of Edson France.)

brother instead of the Oil Company?

A. Mr. Sands said that my brother agreed to see that the bills were paid. [44]

Q. Did he intimate to you that he thought that there was a better chance to get it out of your brother than the Cleveland Oil Company?

Mr. WHITAKER.—That is objected to as incompetent, irrelevant and immaterial, asking for a conclusion of the witness.

The REFEREE.—Objection sustained.

A. Mr. Sands said that he was going to telephone or write to my brother to send a payment of a couple of thousand dollars on account.

Q. (By the REFEREE.) What did you say?

A. It was the time that we were talking about returning this pipe and things there, I told Mr. Sands that we would return this pipe.

Q. (By the REFEREE.) Give us the whole conversation as near as you can that you had with Mr. Sands at that time.

A. That is all my part of it. I don't remember anything more.

Q. (By the REFEREE.) What did you tell him about your reasons for not making the payment?

A. I told him we did not have the money in the treasury at the time.

Q. (By the REFEREE.) Did you tell him why you didn't have the money in the treasury?

A. The production had not brought in enough to pay him. We had other bills to pay, the payroll and other expenses.

(Testimony of Edson France.)

Q. (By the REFEREE.) Did you tell him you were selling stock? A. No.

Q. Did you tell him that you expected any remittances [45] from any source?

Q. Well, we had some oil in storage in the Kern field and we expected to sell that and get some money.

Q. Did you tell him that?

A. Yes, sir. I told Mr. Sands that they had had a fire down there—that we had about 10,000 barrels of oil in storage.

Q. (By the REFEREE.) What did you tell him about that oil in storage?

A. I told him as soon as we could get some money out of it we expected to pay it in part, to make a payment on account and on the notes.

Q. You say you had a fire?

A. We had a fire up there in which the refinery burned. It was where our oil was being taken, but did not belong to us.

Q. You didn't have any fire, then, of your own property? A. No, sir.

Q. And did not, therefore, tell Mr. Sands that you had any fire or loss at all. You just simply had oil in stock.

A. Yes, we had the oil up there and could not ship it on account of the refinery being burned down.

Q. What else did you tell him?

A. That is all that I remember at the present time. I can't think of anything more.

Q. How much of this machinery was purchased—all of it from the Herron Company, that you returned

GEO. E. WHITAKER  
ATTORNEY AT LAW  
STONER BLOCK  
BAKERSFIELD, CAL.

July 24th, 1913.

James H. Deering, Esq.,  
424 City Hall Bldg.,  
San Francisco, Calif.

Dear Mr. Deering:--

Enclosed herewith please find reply brief of respondent in the case of Herron Company -vs- William H. Moore, Jr., et cetera. I received the same by mail this morning.

According to the order made by the Court we have ten days within which to file our closing brief.

Please give the matter your attention, and oblige.

Very truly yours,

W/JH

(Enc.)

*G. E. Whitaker*



(Testimony of Edson France.)

to them?     A. I don't know.

Q. You don't know whether it was their goods that went back to them or other goods?     [46]

A. I don't know, I could not say. I suppose it was bought from the Herron Company. I did not see it myself.

Q. Did you return all the machinery that you had on hand to them?     A. I could not say.

Q. Well, didn't you make the deal with them?

A. I made the deal with them, and the man on the field was instructed to take certain things over to Mr. Sands' store, but I never knew what that was.

Q. Did you instruct him what to do?

A. We did.

Mr. CRENSHAW.—I think that is all.

Cross-examination.

(By Mr. WHITAKER.)

Q. Where do you reside, Mr. France?

A. 1737 West Adams Street, Los Angeles.

Q. How long have you been a resident of Los Angeles?     A. About two years.

Q. When did you first become interested in the Cleveland Oil Company as a stockholder, approximately.     A. About July the 16th or 17th, 1910.

Q. And immediately after that you were elected to the directorate, or appointed?     A. Yes, sir.

Q. In what capacity, sir?

A. As treasurer and vice-president.

Q. The books of account of the corporation were not kept by you or under your supervision, were they?     [47]     A. No.

(Testimony of Edson France.)

Q. And any report you may have signed was simply signed upon the statement made to you by your subordinates or the person having charge of that particular work.      A. Yes, sir.

Q. And you accepted it as correct?

A. Yes, sir.

Q. Now, you say that you talked with Mr. Sands about three or four times in regard to the account of the Herron Company?      A. I did.

Q. And during those conversations you stated that the property at present was not producing sufficient to more than pay certain small debts and labor claims?      A. Yes, sir.

Q. And you also informed him that your company had about 10,000 barrels of oil in storage and which you were unable to dispose of at that particular time?

A. Yes, sir.

Q. And therefore at that time there were no funds in the treasury sufficient to meet these obligations?

A. Yes, sir.

Q. And you stated to him, I believe, that the company would return to the R. H. Herron Company a string of pipe which it had in the field and was not using?      A. Yes, sir.

Q. And Mr. Sands said he would allow you the reasonable value of credit, which he said was 75 per cent of the stock price? [48]

A. That is as near as I can remember.

Q. And the transaction was consummated in that manner?      A. Yes, sir.

(Testimony of Edson France.)

Q. And so far as you know this string of pipe had originally been purchased from the H. R. Herron Company? A. Yes, sir.

Q. And later on, certain pumps, two in number, were returned to the R. H. Herron Company?

A. Yes, they were returned.

Q. Now, the pumps, where were they purchased originally, so far as you know?

A. Well, I don't know anything about the pumps.

Q. During the month of September, 1910, I think on the 15th day of September, \$2,000.00 was paid to the R. H. Herron Company by the Cleveland Oil Company—so far as you know was or was not that money paid to the company on some indebtedness in the ordinary course of business?

A. It was, so far as I know.

Q. Now, did your company do any business with a firm known either as the National Supply Company or the California National Supply Company?

A. I think they did.

Q. Do you know whether any material was returned to the California National Supply Company and accepted by that company in the same manner?

A. Not to my knowledge.

Q. Not to your personal knowledge. Now, did Mr. Sands ever state to you that he would like to have his money paid or notes paid when they became due? [49] A. Yes, sir.

Q. And at one time he said, I believe you so stated to counsel, that he would have to call upon Dr. France who had in some way or other guaranteed the

(Testimony of Edson France.)

account?      A. Yes, sir.

Q. And you have now stated practically and substantially the conversation between yourself and Mr. Sands, you representing the Cleveland Oil Company and Mr. Sands representing the R. H. Herron Company?      A. Yes, sir.

Q. And you think these federal proceedings were instituted some time after the first of January, 1911?

A. I am not sure about that, whether it was in December or January.

Q. Do you know whether the company—of your own knowledge I am calling for, Mr. France,—was selling any treasury stock during either the months of September, October, November or December, 1910?      A. Not to my knowledge.

Q. But the company was producing oil?

A. Yes, sir.

Q. It had ceased active drilling operations, however?      A. Yes, sir.

Q. And was confining itself to production?

A. Yes, sir.

Mr. WHITAKER.—That is all.

Redirect Examination.

(By Mr. CRENSHAW.) [50]

Q. What was your production by day, do you know?      A. I could not say.

Q. Approximately.

A. I could not give you any idea of what it was.

Q. You have no idea of what the company was producing?

A. I am not very familiar with the oil business

(Testimony of Edson France.)

myself. I was put in there to fill a vacancy for a short time.

Q. You say you had 10,000 barrels of oil on hand?

A. Yes, sir.

Q. Where did you have that?

A. We had it in storage up there.

Q. What was oil worth at that time in that particular place, do you know?

A. Well, the oil that we had was contracted for, I think at sixty cents.

Q. That oil was in storage?      A. Yes, sir.

Q. Has it stayed there?

A. I don't know anything about it now.

Q. Who was it contracted to?

A. Warren Brothers.

Q. Was that the refinery that burned down?

A. Warren Brothers leased the refinery.

Q. Did you collect sixty cents a barrel for this oil that was sold to Warren Brothers?

A. At the time that is what it was contracted for.

Q. As a matter of fact they didn't pay that at that time?      A. Not at that time. [51]

Q. Don't you know that they were to pay you less than sixty cents?

A. We were holding it for them in storage until they got a new refinery rebuilt, and I think at that time we had to make a new contract.

Q. Isn't it a fact that you were selling oil to them at less than forty cents?

A. We were to get sixty cents, so far as I can remember.



(Testimony of Edson France.)

Q. I believe you said that you told Mr. Sands as soon as you sold this oil you were going to pay him?

A. Yes, sir.

Q. You didn't have any idea of what the oil was going to be sold for?

A. Well, we sold it later to Warren Brothers, and on account of the refinery being burned down, and our needing some money I told Warren Brothers if they would give us sixty cents a barrel we would sell it to them.

Q. Well, did they take it?

A. Part of it and sent us a check.

Q. And paid you fifty cents a barrel for part of it?

A. Yes, sir.

Q. Do you remember how much they took?

A. I have forgotten just how much that was. I think it was half of it, 5,000 barrels; something like that.

Q. Do you mean to testify, Mr. France, that this schedule which you signed, that you didn't know what was in it?

A. I knew about it and looked it over. I would say it was correct so far as I could testify.

Q. You were familiar with the assets and indebtedness [52] of the company at the time?

A. Yes, sir.

Q. (By Mr. WHITAKER.) The value of these assets and liabilities were not placed by you on that sheet? A. No.

Q. Whom were they placed there by, if you know?

A. I presume they were taken off the books.

Mr. WHITAKER.—That is all.

**[Testimony of Wm. H. Moore, Jr., for the Trustee.]**

WM. H. MOORE, Jr., a witness produced on behalf of the trustee, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. CRENSHAW.)

Q. Mr. Moore, you are the trustee in the estate of the Cleveland Oil Company, bankrupt?

A. Yes, sir.

Q. And the assets of the company came into your hands? A. Yes, sir.

Q. Did you dispose of them?

A. Yes, sir; all that I could ascertain.

Q. Well, please state what you obtained for them.

A. In the neighborhood of about \$10,000.00, and that was entirely from oil that was produced on leases held by the Cleveland Oil Company. The leases themselves were valueless and went back to the lessors.

Q. Are there any assets except money in the hands of [53] the trustee?

A. Not at this time; no.

Q. Has any oil come into your hands as trustee?

A. About \$10,000.

Q. Have you sold it? A. Yes, sir.

Q. Do you remember what price you got for it?

A. Forty cents,—the market price.

Q. Have you got a list of the properties that came into your hands?

A. Well, I have various parts of my records. I

(Testimony of Wm. H. Moore, Jr.)

have not those records here, but I know approximately what came into my hands.

Q. Well, I will ask you if those were the properties. (Counsel produces document.)

Mr. CRENSHAW.—Mr. Whitaker, this is a copy, not the original schedule. Will you permit it to be used?

Mr. WHITAKER.—Oh, certainly, certainly.

A. Yes; those were the properties of the estate and there was some personal property on some of these leases.

Q. Now, you say those leases, you lost them; what did you mean by that?

Mr. WHITAKER.—No, he said they were valueless.

A. There was a lease from the California Kern Oil Company which came into my possession and I took possession of the land and continued the pumping of oil for a little while, but could not do it profitably; and the California Kern Oil Company took proceedings, I think in this court, to cancel the lease on the grounds that the Cleveland Oil Company had not [54] fulfilled all the provisions of the lease. I don't remember now just what the provisions were that were not fulfilled, but I think it was the drilling of wells or else they had not paid the royalties.

A. I think that appears in the records in this bankruptcy proceeding.

Q. Did you pump any other wells?

A. The Volcan lease was the only lease on which the wells could be pumped profitably. I pumped

(Testimony of Wm. H. Moore, Jr.)

those wells, and there was a suit pending at the time of the bankruptcy proceedings to declare that lease forfeited. That matter was brought into this court here for a cancellation of the lease, and after a hearing it was cancelled. None of the provisions of that lease have been fulfilled. That lease provided for a 25 per cent royalty, and it was of no value. Oil could not be pumped and sold for enough to pay the royalty and the expenses. It was subject to an \$83,500.00 bond issue outstanding. It was of no value at all to the estate, it was probably worth \$8,000.00.

Q. What was the value of the personal property that came to your hands, do you know?

A. Not to exceed \$3,000.00.

Q. Has it been disposed of?

A. Most of it went back to the companies that sold it and some of the things were attached.

Cross-examination.

(By Mr. WHITAKER.)

Q. Had you ever had any experience in the oil business prior to the time you were appointed trustee in bankruptcy [55] of the Cleveland Oil Company?

A. I had been trustee of other oil companies.

Q. Had you had any experience in the oil business prior to that time? A. Only as trustee.

Q. Does that involve the pumping of wells to any great extent?

A. Not to any great extent, but it covered that in each case.

(Testimony of Wm. H. Moore, Jr.)

Q. Do you know how much that property which was held under lease of the California Kern Company was producing per month?     A. Yes, sir.

Q. How much?     A. Less than \$1,000.00.

Q. Do you know how many wells they had on it?

A. I don't recall. I think it was about three or four.

Q. Was any defense made to that suit or did you permit it to go by default, the suit for cancellation?

A. I had to let it go.

Q. I asked you if you had made any defense or did you permit it to go by default.

Mr. CRENSHAW.—I think the record will show that.

The REFEREE.—Answer yes or no.

A. I don't know the defense; that is a question of law.

Q. As to the lease held by the Volcan Company, was that contested or let go by default?

A. Very vigorously contested.

Q. You say that the Volcan Oil Company lease could not [56] be operated at a profit?

A. Not and pay the royalty.

Q. Don't you know, as a matter of fact, that the Volcan Oil Company subsequently leased that property to the Midway Field Company, that they are pumping and operating it?

A. No, I don't know anything about it. I know that the wells are now being pumped. I don't know who is doing it.

Q. Do you think that they would pump them at



(Testimony of Wm. H. Moore, Jr.)

a loss?     A. I don't know anything about it.

Q. Did you make an examination of the books of the corporation after they came into your possession?

A. No books or papers of any kind of the company ever came into my possession.

Q. No stock books?     A. No record of any kind.

Q. Did you make any inquiries for them?

A. Yes, sir.

Q. And you were unable to find them?

A. I found out where they were.

Q. Did you ever get them?

A. They were in possession of the Postal Inspectors and they refused to turn them over.

**[Testimony of W. C. Mushet, for the Trustee.]**

W. C. MUSHET, a witness produced on behalf of the trustee, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. CRENSHAW.)

Q. Were you employed by representatives of the Cleveland [57] Oil Company to investigate the books of the company?

A. I was employed by a committee representing the stockholders to make an investigation of the books.

Q. About what time was that, do you know?

A. We made it in October, I think, 1910; the report was dated November 21, 1910.

Q. Did you examine their books and go into their

(Testimony of W. C. Mushet.)

affairs?      A. I did, sir.

Q. Did you make a report?      A. I did.

Q. From an examination of their books and from the notes you took, can you tell what their total indebtedness was at the time of your examination as appears in the books?

A. I cannot from memory. I probably could from this copy of the report.

Mr. WHITAKER.—We have no objections.

The REFEREE.—Examine it and answer the question.

A. It is eighteen months since I saw this report, and I went into the matter very thoroughly at that time.

The REFEREE.—You are asked for a statement as to the liability.

A. The liability, outside of the liability to stockholders and bondholders, is in the neighborhood of \$57,000 or \$58,000.

Q. What was the total amount of obligation on bonds, if you can tell, at that time?

A. About \$87,000. The bond issue was \$100,000 and there seemed to be \$13,000 unissued, which would make about \$87,000 issued. [58]

Mr. CRENSHAW.—That is all.

Cross-examination.

(By Mr. WHITAKER.)

Q. Is that the report or a copy of it?

A. It seems to be a copy of the report, sir.

Q. Let me have it, please. (Counsel examines document.)

(Testimony of W. C. Mushet.)

Q. Now, about when, if you know, have you any record, if you don't know of your own knowledge at this time, it being eighteen months ago, when you commenced work on the books?

A. I believe it was in October, 1910.

Q. What time in October?

A. I could not tell you; probably in the early part of October.

Q. And it took you approximately two months to make this report?

A. I should think it would; of course that was eighteen months ago.

Q. Have you any memoranda in your possession that would show?

A. Yes, I can tell you the day and the hour.

Q. Can you bring that to the referee this afternoon so we can have it in the record?

A. Yes, if the referee so orders.

The REFEREE.—Very well, Mr. Mushet, have that here this afternoon.

Q. I notice this report is addressed to "Philip L. Wilson, Esq., Chairman of Stockholders Committee, Cleveland Oil Company, Los Angeles, Cal.," and is dated Nov. 21, 1910. You say that it was about that time that you delivered this [59] report or a copy of it to Mr. Wilson?

A. Either the day or the following day.

Q. At any rate, no other report was made prior to November 21st by you to the stockholders or to the Committee appointed? A. No, no.

Q. I call your attention, Mr. Mushet, to page 47

(Testimony of W. C. Mushet.)

of your report which contains the following item: Volcan royalty paid, \$2,555.69; California Kern paid, \$1,138.04—did the books of the corporation, the Cleveland Oil Company, when you examined them at that time, show that these amounts had been paid on account of royalties to those respective companies?

A. I cannot recall. I might be able to tell from the report.

Q. There is the report, sir, page forty-seven, about the center of the page.

A. I think they probably paid it, but I want to be sure before I answer the question. (Witness examines document.)

A. Yes, I should say that \$2,555.69 was paid to the Volcan Oil Company and \$1,138.04 was paid to the California Kern Company.

Q. As a matter of fact, the books show that, and you made that report.

A. I made this report showing this among the credits. I don't know; I can't remember. It is probably in money but I would not swear to it.

Q. There is the word "Paid."

A. It is the word "Paid"; yes. I would like to be very definite, but I have had so many things in between, that and [60] this, that it is pretty hard to remember.

Q. I presume your figures are absolutely correct—can you indicate where you have obtained the assets?

A. No; that is something I could not do. I had to take the book figures on account of assets.

(Testimony of W. C. Mushet.)

Q. Did you take the book figures?

A. Well, yes, on September 30th.

Q. State what they show, will you please?

A. Cash on hand—this is prior to September 30, 1910, this is the statement that I referred to in speaking of the assets and liabilities, aside from the bonds on September 30th, 1910—cash on hand \$129.26. It shows oil properties and leases, \$253,-163.05; and then it shows the development in different companies, \$172,852.35; the France Midway cook-house, \$1,521.51; office furniture and fixtures, \$770.92.

Q. Anything else?

A. I think that is about all. I think that is about the credit—you see the value of those things I don't know.

Q. So that any person who inspected the books on Sept. 30, 1910, would find these apparent assets set forth on the books? A. Yes, sir.

Q. Did you make any attempt at all to verify the correctness of those figures? A. No, sir.

Q. You do not know whether the figures are the true value of the assets? A. No, sir. [61]

Mr. WHITAKER.—I think that is all, Mr. Mushet.

The REFEREE.—You can telephone that data to us, Mr. Mushet, as soon as you get back.

A. I will do it right away, sir.

Redirect Examination.

By Mr. CRENSHAW.—The report, Mr. Whitaker, shows that the returns from these different oil leases



(Testimony of W. C. Mushet.)

were taken from the books.

Mr. WHITAKER.—Well, I don't know; it may be. I have not looked at that.

Q. Could you tell from the report what the books show to be the returns from the different oil leases?

A. That is pages 11, 12 and 13—well, which particular lease do you want—the York Syndicate?

Q. I would like to have them all to show the returns. Let me see, now; first give us the York Syndicate development and production.

A. That is on page 7. The book shows that the only sale of oil from this lease was in August, 1910, when 212.32 barrels were sold at sixty-five cents, producing \$138.00. There is \$138.00 in money received from that lease.

Q. The Volcan lease?

A. The books show sales from this lease as follows: amounting to \$13,062.53.

Q. For how much a barrel?

Mr. WHITAKER.—We will stipulate on behalf of the R. H. Herron Company that these reports may go in.

Mr. MUSHET.—I have a copy of it; this is an exact copy.

Mr. WHITAKER.—I am satisfied if Mr. Mushet says it is [62] a copy.

The REFEREE.—The copy will be received in evidence and marked Claimant's Exhibit 2.

Mr. CRENSHAW.—That is all for Mr. Mushet. Now, I would like to put Mr. Sands on the stand

and ask him a few questions before the adjournment at noon, as to some evidence I want to go into.

**[Testimony of John M. Sands, for the Trustee.]**

JOHN M. SANDS, a witness produced on behalf of the trustee, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. CRENSHAW.)

Q. Mr. Sands, what is your present position?

A. Manager of the R. H. Herron Company.

Q. And during the months of September, October, November and December, 1910, what position did you occupy?     A. A similar one.

Q. Do you also do the credit work for the company?     A. I do.

Q. And during those months were you engaged in those services for the company?     A. I was.

Q. Do you read the Los Angeles daily papers?

A. I do whenever I have the time.

Q. Well, whenever you have the time—do you take a paper?     A. Why, yes.

Q. At the time which one were you taking, in the fall of [63] 1910?

A. I take the Los Angeles "Times."

Q. The Los Angeles "Times"; do you generally read that?

A. Not invariably. I don't find the time to read it every day.

Q. You don't read it regularly?

(Testimony of John M. Sands.)

A. Not regular.

Q. Well, about how many times a week did you read the "Times"?

A. Well, that is difficult to answer, it is—I would say not one-half of the time.

Q. Well, did you look in the "Times" for notes on your business, the oil information, for instance?

A. If I was reading the paper I should look for that column.

Q. But you didn't read it but about one-half the time?     A. That is all.

Q. And during the fall of 1910, I presume your habit was about the same?

A. I should think it was.

Q. Do you ever read the "Examiner"?

A. Occasionally.

Q. About how many days out of the week do you read the "Examiner"?

A. We were not taking the "Examiner" during this period to which you have reference.

Q. You didn't read the "Examiner" during that period?     A. No, sir.

Q. Did you read the "Herald" during that period?

[64]

The REFEREE.—There was not any "Herald" during that time.

Mr. CRENSHAW.—The "Morning Herald" was going at that time, I think.

Q. I think that you testified on the proceedings here in this matter that you kept a press clipping-book down at your office; is that correct?

(Testimony of John M. Sands.)

A. I testified that there was cut out from different newspapers clippings which had reference to the oil business, and I further testified that at that time we didn't subscribe to a press clipping bureau. I wish, if it is possible here, to correct my testimony at that date. After giving my evidence here, I made inquiry and ascertained that at that particular time we were subscribers to the Dake's Clipping Bureau.

Q. Well, now, have you those clippings on file in your office that were sent to you by Dake's?

Mr. WHITAKER.—With reference, of course, to this particular company?

Q. Yes.

A. I doubt if they are, for the reason that where they had reference to a particular fact they are filed in and under its particular heading. For example, if it is the Cleveland Oil Company, it would have been under the Cleveland Oil Company heading.

Q. Well, have you got clippings of the Cleveland Oil Company in your office?

A. I have them here. I have here the clippings of December 20th; this is the first clipping that comes to my knowledge, of anything published so far as my records are concerned, [65] of the Cleveland Oil Company. I have reason to think that perhaps it is the first public record.

Q. I notice there are two clippings, one from the Los Angeles "Examiner" and one from the "Herald," both purporting to be the same date.

A. Yes, sir.

(Testimony of John M. Sands.)

Q. Are these the only clippings that you say that you saved?

The REFEREE.—He said that they are the first.

A. They are the first.

Q. Were these sent you by the Dake's Company?

A. I have nothing from Dake's. I don't know whether they made any reference to it at all in their report, but the reason I referred to the Dake's was that I prior testified here that we were not a subscriber to any clipping bureau and I have informed myself along that line and want to correct my testimony.

Q. You don't know whether they did send you any clippings or not?

A. I have no knowledge of it. The Dake's Clipping, well, they would not come before me; that would be cut out by someone in the office and if they had any reference to it they would be filed in that particular reference. If I ever had occasion to go to a particular file, sir, if I had occasion to go there, well, I would find it there.

Q. You have examined the files of the Dake' Clipping Bureau under the heading of Cleveland Oil Company?

A. No. You see, each day, if they come in and have reference to any particular company, you see, why I would not [66] see that clipping unless I had occasion to go to that file—

Mr. WHITAKER.—What counsel is seeking to find out is this: as to whether or not you had looked among the files of the Cleveland Oil Company and



(Testimony of John M. Sands.)

found any other clipping except those.

A. None other; those are all that were in the files.

Q. (By the REFEREE.) And all the other clippings that do not refer to any particular case are destroyed? A. Yes, sir.

Mr. CRENSHAW.—I would like to introduce these in evidence.

The WITNESS.—I wish to explain that while I have testified as to the “Times,” the “Times” is the paper that I read, and the only one that I subscribe for, and so with the other clippings from some other paper, it must be that somebody else takes that paper, and clipped those out.

Mr. CRENSHAW.—I do not understand that you clipped these yourself.

The REFEREE.—The clippings will be marked Trustee’s Exhibits 3 and 4.

Mr. CRENSHAW.—Well, now, there is information I want to get. It is a question of evidence as to whether or not I will be permitted to introduce copies of the daily papers in evidence, and I would like to find out before the noon adjournment if it will be admissible as the only ones that we can get are in the library, and I want to avoid the inconvenience of bringing them here if they are not ruled to be admissible.

Mr. WHITAKER.—Do you desire now to make an offer? [67]

Mr. CRENSHAW.—Yes.

Mr. WHITAKER.—To which we object that such articles would be utterly incompetent, irrelevant and

(Testimony of John M. Sands.)

immaterial, not binding in any respect upon the R. H. Herron Company, the respondent to this citation, and especially not binding if it cannot be shown, and I think it is not shown that Mr. Sands, who is the witness on the stand at this time, read those papers and the articles contained therein relating to the Cleveland Oil Company.

Mr. CRENSHAW.—He has testified that he does read the “Times” but he could not remember on what date he had read it.

Mr. WHITAKER.—Why don’t you ask the question as to whether or not he remembers reading, outside of those clippings, any other item at all about that certain time, relating to the financial condition of the Cleveland Oil Company.

The REFEREE.—He may not want to ask him that question; he may not want to be bound by that.

Mr. CRENSHAW.—He said when he did read the “Times” he read about the Oil Companies.

The REFEREE.—I will ask you to state your purpose in the matter so we will understand it. It is right that you have introduced the daily papers with the purpose of charging him with notice.

Mr. CRENSHAW.—If there were articles in the paper, whether he had read them or not would put him on his guard or put a prudent man on his guard—cause him to investigate—it would be proper evidence.

The REFEREE.—Haven’t you got to show that those articles were called to his attention, not occasionally that he read [68] them, but that his at-

(Testimony of John M. Sands.)

tention was called to them or that he saw them, or had opportunity to read then, at least, not the casual reading of the newspaper.

Mr. CRENSHAW.—He testified that when he read the paper the oil notes were of interest to him in his business.

The REFEREE.—Well, he says that he read only half of the papers; is there any presumption that he read that one that you particularly called for? Have you got any authority on that?

Mr. CRENSHAW.—I could not find any authority on that question.

The REFEREE.—The objection will be sustained; no proper foundation laid.

Q. Well, I will ask you, did you ever read anything in any paper during the fall of 1910 and prior to December 20, 1910, in reference to any trouble about the Cleveland Oil Company.

A. I believe that the newspaper clipping which has been presented and marked "Exhibit 3" will answer that question.

Mr. WHITAKER.—That is not the question.

Mr. CRENSHAW.—This says it is the first public notice.      A. Sure.

Mr. WHITAKER.—The question is, did you—that is what he asked—before that time, did you ever read anything in the newspaper about the Cleveland Oil Company?

A. No, sir, not to my knowledge.

The REFEREE.—Did you—yes or no?

A. Not to my knowledge.

(Testimony of John M. Sands.)

Q. Did anybody ever inform you that Mr. Mushet was making [69] a report to the stockholders?

A. Not to my knowledge; no.

Q. You didn't know that Mr. Mushet's investigation was being made by the stockholders' committee of the Cleveland Oil Company?

A. Not until it became public.

Q. Well, you did know it when it became public?

A. Of course I seen it in the paper.

Q. The question is whether you knew that Mr. Mushet was making the investigation.

A. Only as I seen it in the paper.

Q. Did you see that in the paper? A. Yes, sir.

Mr. WHITAKER.—You had better be specific about it, when you saw it.

The REFEREE.—The question is not what you saw, but whether you knew what he was doing there. Did you know that he was making an investigation?

A. I had no knowledge of it until it became public.

Mr. CRENSHAW.—He says he had no knowledge until it became public.

The REFEREE.—You asked him the question and I tried to make it explicit, did he have any knowledge that Mr. Mushet was investigating the affairs of the company for the purpose of making a report.

The WITNESS.—Not until it became public.

Q. (By the REFEREE.) Until what became public, the report of the fact that he was investigating?

A. Wait; I will have to think about that. I didn't charge [70] my mind with it. The only knowl-

(Testimony of John M. Sands.)

edge I had of it was by reading it in the newspapers. I cannot state that date, and that is what I meant by saying when it became public.

Q. Do you understand my question? It is, was it the fact that he was making the investigation that became public, or the report itself?

A. No, the report itself.

Q. (By the REFEREE.) That is what we want to know. Well, then, he made the report on the 21st of November, and that was made public at that time, prior to that time you didn't know anything about it?

A. Exactly.

Q. You didn't read anything in the paper to the effect that the stockholders' committee had been appointed to go into the affairs of the company?

A. Not until I seen it in that article—

Q. (By the REFEREE.) This was dated December 20, 1910? A. Yes, sir.

Q. Did you ever watch the stock quotations, did you get the stock exchange sheet down at your office?

A. No, sir.

Q. Did you ever watch the stock quotations?

A. I never did.

Q. Do you know what the stock of the Cleveland Oil Company was selling for?

A. I testified at the first hearing that I had no knowledge of what the stock was selling for, but in looking over the papers which are presented here, I find in one letter that I made reference as to what the stock was selling at. [71]



(Testimony of John M. Sands.)

Q. Can you produce that letter? (Letter produced by witness.)

The WITNESS.—I wish to add that I could not interpret the stock sheet if it was presented to me; that is why I testified as I did at my first hearing.

Mr. CRENSHAW.—We offer this in evidence.

Mr. WHITAKER.—No objection.

The REFEREE.—It will be Trustee's Exhibit No. 5.

Mr. WHITAKER.—I would like later on to withdraw these papers and file copies; they can be gone over either by yourself or Mr. Crenshaw.

Mr. CRENSHAW.—That will be satisfactory.

Q. At the time the officers of the Cleveland Oil Company were arrested by the United States Postal Authorities were you familiar with that, did you know about that?

A. Why, I knew that by reading it in the print.

Q. You saw that in the papers and read about it?

A. Yes, sir.

Q. (By the REFEREE.) Is this paper signed, is that Mr. Sands' signature?

Mr. WHITAKER.—Yes.

Q. Did you make an investigation of the affairs of the Cleveland Oil Company? A. I never did.

Q. Did they ever furnish you a statement?

A. No.

Q. Can you furnish for us the last credit that was given to the Cleveland Oil Company?

Mr. WHITAKER.—I think it is on the statement

(Testimony of John M. Sands.)

which is [72] already in evidence here, Mr. Crenshaw.

A. It was December first, 1910, credit for pump returned, \$300.00.

Q. Now, what was the last debit?

A. The last debit shown here was November 15, 1910, for \$2,607.43 which is—let me see what that was for. I believe I find the bill here; I may get it there. That was cash to protect the note.

Q. Can you tell from your statement here when was the last time that you sold them any goods and gave them any credit for it?

A. September 26th, 1910.

Q. (By Mr. WHITAKER.) How much?

A. On that day there was \$40. They were purchasing right along, nearly every day. Every few days that month and at least half of the days in August and it appears almost every day in July of the same year.

Q. What was the total of the purchases during the month of September, approximately?

A. \$65.54. In the month prior to that it was \$2,920.76.

Q. In July?

A. In July the merchandise purchased was \$3,547.23.

Q. You say September 26th was the last?

A. Yes, sir.

Q. Was the last day that they purchased any goods? A. Yes, sir.

Q. Do you know whether there were any more

(Testimony of John M. Sands.)

goods purchased by the Cleveland Oil Company from your company?     A. The records do not tell. [73]

Mr. WHITAKER.—He is asking you if you know.  
(Question read by reporter.)

Q. After September 26, 1910?

A. Well, I don't know. Perhaps I could ascertain by refreshing my memory in that regard.

Q. I will ask you to refresh your memory. Have you that correspondence?

A. Yes. Why, we considered at that time they *they* were owing us quite a considerable sum, and, of course, like other creditors, they reached the period where they should either increase or decrease. At that time, we thought that we had given them—that they were up to their limit of credit.

Q. Isn't it a fact that you practically cut off their credit on the last of August?

The REFEREE.—Mr. Mushet telephoned that he commenced work on the report, on the investigation, on the 26th day of October, and continued until the 21st day of November.

A. It was not. They were privileged to call at our store at Bakersfield, Taft and Maricopa and buy supplies for emergency requirements, and if they wanted anything in excess of the emergency requirement they were then to communicate with the Los Angeles office.

Q. Did they ever make any request for anything except emergency equipment after the last of August that you know?

A. I don't think that they asked for anything other

(Testimony of John M. Sands.)

than emergency requirements after that date. The reason was, perhaps, that they did not require it.

Q. Now, can you tell me at what time you did cut off [74] their credit except for emergency equipment?

Mr. WHITAKER.—I didn't understand, Mr. Crenshaw, that the witness has so testified. He has testified that they had local credit and any other credit they were to communicate with the Los Angeles office.

The WITNESS.—I can present this letter.

Mr. CRENSHAW.—Very well.

The WITNESS.—It is dated the ninth month and twenty-first day. That gives them orders for large requirements to call on the Los Angeles office.

Q. (By the REFEREE.) That is the notice that you gave? A. Yes, sir.

Q. (By the REFEREE.) Whom did you give that to?

A. That goes to the different stores, when men in the field make demand for supplies.

Q. (By the REFEREE.) What information did you have and act upon when you sent that letter?

A. None, other than the account itself.

Q. That is not a very large account, is it, for a prosperous oil company to be running?

A. It represents \$1,500.

Q. Well, at the time this letter was written—

The REFEREE.—Do you want to offer that in evidence, Mr. Crenshaw?

Mr. CRENSHAW.—Yes.

(Testimony of John M. Sands.)

The REFEREE.—It will be Trustee's Exhibit No. 6.

Q. September 21st, what was the amount of the account?

A. September 21st, I will tell you. It was just what it was, less the purchases in September; it would represent, of [75] course, \$14,750 in round numbers.

Q. Is that a particularly large account for an oil company which was doing a prosperous business?

A. Well, it is so considered.

Q. Don't you carry a great many larger accounts on your books than \$14,000?

A. Well, in cases where the property, or the assets of the company are more.

Q. Then you did know something about the assets of this company? A. From information gathered.

Q. What information was that, and where did you get it?

A. I seen their property in the Kern River field.

Q. You went up and looked at it yourself?

A. Yes; I went by the property, and they had quite a number of wells dug there. I don't recollect how many. They seemed to be in a very prosperous condition; they were all in where there were producing oil wells, and, in addition to that, at this particular time, this company had a lease on what was, and is, considered a very valuable piece of oil territory, as I understand it, in the Midway field.

Q. What lease was that?

A. I can't recall the section, but it was being oper-



(Testimony of John M. Sands.)

ated, I believe, under the name of the Cleveland Oil Company, if I recall correctly. I did not visit this Midway property, but if I recollect correctly it is in the same location as the property of the Buick Oil Company or in that neighborhood.

Q. Did you receive any information between the time that [76] you looked at the property and the 21st of September that they did not have that lease and would not operate that property?

A. I did not.

Q. In other words, when you wrote them this letter their company, so far as you know, was as prosperous as it was at any time in its existence?

A. To the best of my recollection and belief.

Q. And you considered it a prosperous oil company? A. I so considered it.

Q. But at the same time you withdrew the credit?

Mr. WHITAKER.—You are using a statement, or making a statement, which the witness has not testified, that they withdrew the credit, it was not that but that with large orders the Los Angeles office had to be first consulted, and I think we will show that that is the universal custom in all that country.

Q. Previous to this notice, how much credit was the Cleveland Oil Company permitted at your different stores?

A. Credits are determined under conditions of the account at the time the requisitions are demanded. You can't have in a credit department a letter issued in January that would provide for November, and I make mention of this to show you that it is custom-

(Testimony of John M. Sands.)

ary that there should be but one head to a credit department.

Q. I will ask you the question in a different way, previous to September 21st, where was this goods that was purchased by the Cleveland Oil Company, purchased?

A. Previous to September first the purchases [77] were at times made in Los Angeles and at other times in the field, if they were large requirements they generally were made in Los Angeles, because it is customary.

Q. Well, did they purchase goods of your stores in the field without consulting the Los Angeles office?

A. Under instructions from us at different periods.

Q. I see you limit them in this notice of September 21st to \$50. Did you ever place any limit on them before that time?

A. I would have to look over the papers to see.

The REFEREE.—Look and see.

A. I see here letter of date August 5th, where one of our managers writes in that he is delivering goods to the Cleveland Oil Company in small quantities almost daily and wanted to be advised when we expected a settlement from them. He states that the amounts are not large but have exceeded the \$100 named in your letter of the 22d, of the month prior.

Q. That is the 22d of July?

A. Yes; you wouldn't hardly think that the company—

The REFEREE.—Just answer the question.

Q. Your managers were delivered a notice about

(Testimony of John M. Sands.)

July 22d that they were to permit the Cleveland Oil Company to buy goods only to the limit of \$100 from the company?

A. No, it was asking for information.

The REFEREE.—He says, Mr. Sands, that there was a \$100 limit put upon it upon July 22d, have you got the letter of the 22d?

A. The next letter will show it—no, it is dated August 6th (reads): “Confirming our telephone conversation [78] of yesterday, you have the privilege of delivering the Cleveland Oil Company 1100 feet of 8 $\frac{1}{4}$ ” 28# casing. This is granted for the reason that they are to pay us its equivalent in cash to-day.” I won’t say whether we got the cash, we had the promise anyway.

Q. No cash after August, August 6th?

A. We didn’t get any cash after that until September 15th, so I can’t tell whether that is the cash that we were to get or not.

Q. Did they give you a note in August?

A. No, there is a note on the 22d day of August that we paid and charged to them. There is where we paid and charged (witness indicates) September 10th there was another note of \$4,000.

Q. What do you mean by you paid those notes and charged them to them?

Mr. WHITAKER.—I understand the witness means that when a company makes a note they put it in the bank and then when it becomes due, if the company does not pay it, they take it up and charge it back to the company; is that correct, Mr. Sands?

(Testimony of John M. Sands.)

A. Yes, sir.

Q. These notes, the first one was paid by you, you say, on August 22d?

A. I see one note was paid by us on August 22d.

Q. That was a note of the Cleveland Oil Company which was placed in the bank? A. Yes, sir.

Q. Do you remember what bank? [79]

A. No, I don't recollect.

Q. Have you got that note in your possession?

A. I have reason to believe it is filed here.

Mr. CRENSHAW.—Do those show that they have been deposited in banks?

The REFEREE.—Yes, they show the date of their payment.

Q. (By Mr. WHITAKER.) What was the amount of the note?

A. The amount of the note was \$2,911.17.

Q. Do you know whether or not the bank made any demand upon the Cleveland Oil Company for the payment of that note?

A. I could not tell you. I believe I cannot answer your question.

Q. I say, did the bank make a demand on the Cleveland Oil Company for the money?

A. I have no way of knowing this particular note.

Q. Were they placed in the bank for the purpose of the bank collecting them, they were put there for the purpose of collection, were they not?

A. Oh, yes.

Q. Why were they returned to you?

A. Because it was necessary to protect them.

(Testimony of John M. Sands.)

Q. That is just what I am getting at. Did the bank fail to collect them from the Cleveland Oil Company?

A. They must have, or they would not have made a demand upon us.

Q. Did they state their reason when they made the demand?      A. No.

Q. But they would not have made the demand unless they had made an effort to collect them and had failed? [80]

A. I don't know what the bank's custom is of collecting its notes.

Q. Did you get the commercial report from Dun or Bradstreet?

A. We were a subscriber at this particular time to Dun's.

Q. Have you got any report in regard to the Cleveland Oil Company?

A. No, not to my knowledge.

Q. Have you those reports on file in your office?

A. They would be right here if we had any.

Q. (By Mr. WHITAKER.) In other words, what you mean is that if there were any reports relating to the Cleveland Oil Company it would be among those papers.

A. Yes, sir; so it is certain that they did not send us any.

Q. Did you ever get a report from any local company?      A. No, I had no occasion to.

The REFEREE.—We will adjourn until 2 o'clock.

Mr. CRENSHAW.—Mr. Whitaker, during the in-



(Testimony of John M. Sands.)

terim, will you kindly bring the original notes of which these are copies? The referee would like to have them.

The WITNESS.—You have some originals and a lot of copies. [81]

July 24th, 1912, 2 o'clock P. M.

JOHN M. SANDS, on the stand.

Direct Examination Continued.

(By Mr. CRENSHAW.)

Q. Now, Mr. Sands, do you know what date those checks were returned? Can you tell from your letters?

A. I think from the records there—well, I have nothing here on file as to the date the notes were returned. It could be ascertained.

Q. You testified concerning it in your previous examination by stating the teamsters' bills would indicate that, and the teamsters' bills were made a part of the record.

A. You see later; I know the date shows here (indicating). But I can't find out from the index what dates show.

Q. Did you have any correspondence with your manager here?

A. That letter which is on file as an exhibit is the only letter I could find.

Mr. WHITAKER.—Look at this and see if it will refresh your memory. (Counsel produces letter.) I think this tells it exactly.

A. This is a letter from our manager at Taft. It says, "The Cleveland Oil Company returned the

(Testimony of John M. Sands.)

pumps of which you wrote this morning. One of them is pretty badly stripped of parts." And so on—that is on November 25th.

Q. That was on November 25th? Then that credit which appears for the pump on December first is for those pumps written of in this letter? [82]

A. Yes, sir; yes, sir.

Q. The property that was returned about the 31st day of October and for which it appears they were given a credit of \$2,823.37, what was that?

A. That was the casing.

Q. That was the casing? A. The casing.

Q. And a payment was made on account to the R. H. Herron Company in September—

A. It was about September 15th, \$2,000.

Q. Do you know who paid you that cash?

A. I suppose—

Q. Was there any agreement between you and them to the effect that they would pay you the \$2,000 at that time?

A. Why, they had been promising cash for several weeks.

Q. Was the amount agreed upon, what they should pay at that time?

A. I am not positive concerning it. I believe that these letters which we have here indicate a certain sum of cash that they were to pay.

Q. Is that the money which was to come from Dr. France?

A. I can't tell where they got the money to pay this, but of course most of my assurances were from

(Testimony of John M. Sands.)

Dr. France, and whenever I would make a demand upon them, why that demand would naturally reach Dr. France.

Q. Did you have any correspondence with Dr. France about it?

A. I think there is some there among those papers. I remember of writing him. [83]

Q. Why did you go after Dr. France and didn't go after the company for your money?

Mr. WHITAKER.—That is objected to as incompetent, irrelevant and immaterial, the question as I understand it, and I think your ruling is absolutely correct on that, that this narrows it down to whether the Herron Company or Mr. Sands had reason to believe that he was receiving a preference at the time that these payments were made and that the company was not solvent. The mere fact that he had communicated with one of the members of the company who had strengthened the account by giving a personal guarantee would not affect the rights of the Herron Company in any way.

Mr. CRENSHAW.—It seems to me that it is more or less material as to why he should go after Dr. France and not attempt to collect his money from the company. Those reasons would throw some light on what he knew about the finances of the company.

Mr. WHITAKER.—To which we would answer, with all due respect to counsel, that if a man has a claim against a corporation and it is guaranteed by any person, he has a right to go after either one, and

(Testimony of John M. Sands.)

the fact that he goes after one cannot affect the liability of the other in any way. We will take a ruling, Mr. Referee, on that.

The REFEREE.—I don't see what difference it makes whether he should seek one or the other. If it was the other way—if the surety got a benefit, why it could be recovered just as much one way as another because the statute is that the person to be benefited is the one that recoveries may be had from. I don't see why, if a man has two persons [84] to go to and he chooses to take what he can from one, I don't see why that would show cause to believe that he was getting a preference.

Mr. CRENSHAW.—Isn't that a reason—wasn't there any reason why he should go after Dr. France instead of the Company—

The REFEREE.—He didn't go after Dr. France.

Mr. CRENSHAW.—I understood that his testimony was that he attempted to collect his money from Dr. France.

The REFEREE.—I didn't understand that.

Mr. WHITAKER.—He testified that he communicated with Dr. France with reference to getting this money, and that he had Dr. France's personal guaranty.

The REFEREE.—I understand that when the goods were sold that Dr. France had negotiated the sale, and that Dr. France said that he would see that the bill was paid, but I don't understand that after that this witness or the Herron Company ever made any demand on Dr. France for the money. Is that

(Testimony of John M. Sands.)

a fact?      A. Yes, sir.

The REFEREE.—You never demanded of Dr. France the money at all?      A. No, sir.

The REFEREE.—Objection sustained. Do you want an answer to your question?

A. No, I understood the witness to testify differently.

The REFEREE.—I see what you mean, but that is the way the testimony was.

Q. Well, now, all the communication you had with Dr. France [85] regarding this money was as an officer of the company and not on his personal guarantee?

The REFEREE.—Answer the question.

A. My communications are all addressed, I think, to Dr. France as president of the company and they are here, all my letters from him and to him.

Q. You had a written guarantee from him—

The REFEREE.—According to the testimony there is no liability upon Dr. France to him at all; it was an obligation so far as it goes here to see that it was paid.

Mr. CRENSHAW.—It shows no—

The REFEREE.—They had a written personal guarantee, according to this testimony.

Mr. CRENSHAW.—That testimony is not competent.

Q. Did you have a written personal guarantee from Dr. France?      A. We did.

Q. On this account?      A. We did.

Q. And you made no attempt to collect from him



(Testimony of John M. Sands.)

on account of the written guarantee?

Mr. WHITAKER.—Up to what time? I will state that after the company was adjudicated a bankrupt and long after that there was an attempt made.

Q. Up to the time of the adjudication?

A. I know that we wrote him as president of the company—I don't recollect—but the letters are here as evidence, everything that passed between us and we could soon arrive at a date by looking at these papers. [86]

Q. What time did you get that guarantee?

A. It was about the time that the company was formed. Just after the company was formed.

The REFEREE.—Have you got that guarantee there?

Mr. WHITAKER.—No, he has not the guarantee here, but I have no objection to the witness producing the guarantee. Where is that guarantee?

A. Judge Money, I may have given it to him.

Mr. WHITAKER.—He is not here.

The REFEREE.—Well, he is not in the city.

A. No, Judge Money is an attorney at Columbus, Mr. Helm.

Q. Do you know what the contents of that guarantee is?

A. I could not give the exact wording, although it was sufficient to guarantee what deliveries were made to the Cleveland Oil Company.

Q. It was not on your regular form?

A. No, sir, it was not on the regular form.

(Testimony of John M. Sands.)

Q. How long previous to this \$2,000 payment made on September 15th did they make you any payment of any considerable amount? Will you look at your sheet there?

A. Let me see; now, there is a cash payment on September 15th, 1910.

Q. That is the payment we are referring to, at least \$2,000.

A. Here is one, check 1869, to cover note due August 9, 1910, notes received \$1,500. No—I have got that wrong the date was August 6, 1910.

Q. How much? A. \$1,500. [87]

Q. Well, you carried on the negotiations with the officers of the Cleveland Oil Company in regard to this account and the payments made on them.

A. Yes, sir.

Q. Did anybody else take that up with them at all for your company? A. Not that I can recall.

Q. Whom did you have your negotiations with of the Cleveland Oil Company, what officer?

A. At times with Dr. France, and generally with him.

Q. With Dr. France? A. Yes, sir.

Q. Was he here in August and September?

A. I doubt whether he was or not from these notes.

Q. Well, when Dr. France was not here, whom did you take it up with?

A. Why, Mr. Thomas Montgomery and Mr. Batchelder.

Q. Well, when you went up to see about getting payment on this account, it was growing rather

(Testimony of John M. Sands.)

large; what did they tell you?

A. Well, they were expecting money soon.

Q. Did they say where from?      A. No.

Q. Well, how soon after that did you get any money, after the conversation where they told you they were expecting it soon, can you fix the time?

A. Why, it could not have been very long, because there is payments here pretty nearly every month; it was quite an active account. [88]

Q. With reference to the return of the material, when did you first have a conversation with the officers of the Cleveland Oil Company concerning that?

A. I think it is prior, I think, to the delivery of it to us, and that was delivered in October.

Q. Did you accept that material because you thought you were getting a big bargain in getting it back?

A. Not at all. We accepted that material because it is quite customary to accept the return of second-hand material.

Q. Was the price you gave them credit for a good price for the material?      A. It certainly was.

Q. You considered it a big price.

A. I considered it more than a fair price.

Q. More than you would have gone on the outside and taken it for?

A. I won't state that. I would consider it a fair price.

Q. Whom did you have the conversation with about taking back that material?

A. Why, Mr. France.

(Testimony of John M. Sands.)

Q. That is E. France.

A. Yes, E. France, and Mr. Batchelder was present at one time when I was talking to Mr. France about it. Most of my conversations were with Mr. France, although I recollect there were others present.

Q. Tell us how it arose, the proposition that you were to take that material, the circumstances.

A. They stated that they had no use for the material and would be very glad indeed if we would receive it as a credit [89] on account, if we could use it. I told him that we could use it at a price.

Q. Well; they told you that they could not give you the money?

A. At that particular date; yes. They didn't have the money; they were expecting money.

Q. Did they tell you how much they were expecting? A. They did not.

Q. They did not tell you how they were going to get it? A. They did not.

Q. Simply told you that they were expecting money? A. Yes, sir.

Q. Can you fix any date when you were up there?

A. I can safely say it was during October.

Q. It was during the month of October?

A. Yes, sir.

Q. How many times were you up there?

A. Two or three times at least.

Q. Did you notice when you were up there on those occasions during the month of October, or were you aware of the fact that Mr. Mushet was making an

(Testimony of John M. Sands.)

examination of the books?

A. I had no knowledge of that.

Q. You had no knowledge that the stockholders were investigating the account?

A. I had no knowledge of it.

Mr. CRENSHAW.—Did you find those letters to Dr. France?

Mr. WHITAKER.—There is quite an aggregation of letters here. Some refer to the France Oil Company and some to the [90] Cleveland Oil Company. I am trying to sort out those which refer to those dates. I was going to show them to the witness afterwards, they don't seem to be in chronological order.

Q. Mr. Sands, at the time you agreed to take back this casing, you didn't think this was a very good account, did you?

A. I always thought it a good account. I had no reason to feel otherwise about it.

Q. I said, did you still consider this a good account? A. I certainly did.

Q. When did you first commence to consider it a bad account?

A. I never considered that there was any question or doubt in regard to the account at all. That didn't come up, so far as that is concerned, until the trouble with the postal authorities—the bankruptcy proceedings.

Q. I believe you testified this morning you knew that their stock was going down very rapidly, the market value of it.



(Testimony of John M. Sands.)

Mr. WHITAKER.—No, he didn't testify; he said a letter which is in evidence.

Q. You were aware of the fact?

A. I think very likely I made reference to the value of the stock at that particular date. I never determine things by stock value in that way and I was quite surprised to see that I had mentioned it.

Q. Did you make any investigation at any time as to the properties the company had at that time?

A. Prior,—it was quite a while, anyway. [91] As to their property in the Midway there.

Q. You saw the original property they started out with?

A. Well, yes, of course they kept improving those properties.

Q. Do you know what their daily or monthly production was at that time?

A. Every time I would, as I say, drop in and meet Dr. France, he would mention the production, just what it was during the previous month.

Q. Were you aware of the facts that the company declared a dividend in July or that they passed the dividend? A. No, I had no way of knowing that.

Q. Did you have any correspondence or were any matters taken up through letter?

A. On what subjects?

Q. Any of these negotiations carried through correspondence.

A. You mean about the return of these goods?

Q. And the payments on their account during the last few months?

(Testimony of John M. Sands.)

A. Well, if I had, the letters are here present, every letter we have.

Mr. CRENSHAW.—I think that there was a letter this morning that we were looking for, dated some time in July, instructions to his manager at Moron.

Mr. WHITAKER.—I can't find that letter, Mr. Crenshaw. Here is the letter of August 6th, Mr. Crenshaw, addressed to his manager; it has a little bearing on the question you are asking about. [92]

Mr. CRENSHAW.—I would like to introduce that in evidence.

Mr. WHITAKER.—No objections.

The REFEREE.—It will be Trustee's Exhibit No. 7.

Q. Do you know the occasion of your writing that letter?

A. Yes, it stated that they were owing us about \$20,000.

Q. Did you ever make any inquiry? Did you place these in the bank yourself?

A. Yes, these notes indicate that they have been discounted.

Q. I say, did you place them in the bank yourself?

A. Oh, yes, we discounted them.

Q. At the bank? A. Yes, sir.

Q. And they were guaranteed by you?

A. Oh, yes.

Q. Did you try to discount them at the bank without your guarantee?

A. Why, it is necessary, you endorse a note, you

(Testimony of John M. Sands.)

guarantee it to the bank. Some people endorse them without recourse.

Q. Did you endeavor to discount them at the bank without guaranteeing them?

A. Why, not generally; it is not customary to do like that. That is the form.

Q. It can be done occasionally and is done?

A. If the bank takes them.

Q. Well, these notes were returned to you directly after they became due.

A. Yes, sir; we had to protect these notes. I say, we had to protect them. They show on their faces what time they were [93] due, otherwise they would have been protested.

Q. What did you do when these notes became due—took it up with the Cleveland Oil Company?

A. Oh, yes.

Q. Did they give any reason for not paying their notes when they became due?

A. The only reason was that they had been disappointed in not receiving their money in time to protect these.

Q. They admitted the fact that they did not have the money to take them up when they become due?

A. Well, that particular date; yes.

Q. Did they say if the bank had brought them around a few days afterward that they would have got the money?

A. Well, I don't recall any such conversation.

Q. Did they ever give you any checks which were

(Testimony of John M. Sands.)

not good?      A. No.

Q. Did they ever give you any checks which they paid at a later date?

A. No, they never gave me a check but what was good; always paid on demand.

Q. Did they give you any checks and ask you to hold them?      A. They never did.

Q. Were all the moneys that were paid by them paid by check? That is, the larger amounts—I mean, were they paid by check?

A. To the best of my knowledge, this record will indicate just how we got the money every time.

Q. Will it indicate as to whether it was cash or not?

A. Yes, sir; you see that says “paid by check.”  
[94]

Q. Now, I will show you this item of December 31st, “Cash to apply check #265.”

A. That is the number of their check.

Q. What does that wording mean?

A. Why, that means exactly what it states, that the cash represented by the check is credited to the account.

Q. That did not mean that they paid you cash to apply on a check that they had previously given you?

A. No.

Q. It might mean that, might it not?

A. Not in that way—

Q. Is that the particular form to say. “Cash to apply check”?

Mr. WHITAKER.—We object to that question.

(Testimony of John M. Sands.)

The REFEREE.—Objection sustained.

Q. Do you know what those words mean, can you explain it?

A. It means that it was cash represented by Check #265 that was credited to the account.

Q. Do you find any similar items on the account to that?

A. There is the same thing (indicating), “Cash on account interest on note.” Now, let me see—you see here (indicating) “Cash to apply \$2,000” and here “received check #1398 to cover.” Every man has a particular style of his own, for which you know I cannot be responsible.

Q. I understand that. Did you ever receive any checks from anybody else on this account, outside of the Cleveland Oil Company? Any personal checks, that you know of?

A. Not that I can recall. [95]

Q. Did Dr. France ever pay anything on it at all, personally?

A. Not that I can recall. If that is essential I would be glad to have my clerks look up the record and furnish it to you. I don't recollect it.

Mr. CRENSHAW.—Have you found the France correspondence yet?

Mr. WHITAKER.—I am getting it right now.

Q. I believe you testified this morning that you got no report from Dun & Company on the Cleveland Oil Company?

A. I testified there was none in this record and if there had been one it would have been in this record.



(Testimony of John M. Sands.)

Q. You didn't make any further search.

A. No, because that is the only record that we have; there was nowhere to search.

Q. Your Dun report would go in there if you had gotten one?      A. Yes, it would have.

Q. Did you ever request from Dun & Company a special report at any time on the Cleveland Oil Company?      A. Not to my knowledge.

Q. Then, at the time that these notes were not being paid at the bank, you didn't make any investigation of the affairs of the Cleveland Oil Company?

A. These notes, if you follow the records here closely, I believe you will find each and every note had a good and substantial payment thereon and that the account was active; it was not a dead account. They were buying goods right along.

Q. Along here in August, they owed you about \$20,000, didn't they? [96]

A. They did when I wrote that letter. I don't know what the date is.

Q. Isn't it a fact that most of these notes were due after August?

A. Here is a note due in November; and this is another one, due four months after June 23d; and another one four months after May 23d; and another ninety days after May 23d.

Q. What is the total amount of payments received on those notes? Does it show?

A. It shows that casing was returned that was credited on the note due August 21st and then there was a payment in cash as well, September 15th, that

(Testimony of John M. Sands.)

was to apply on the note due September 10th.

Q. Was there any other casing returned?

A. No, that is all of the casing that was returned to us. As I remember it, there was some other casing in the field; what became of it I don't know. I know this, that in talking with our man in the field at the time, he stated that there was some in the field that we could not use to advantage. I said, "Well, we won't buy what we can't use to advantage." What became of that casing that we could not use to advantage I don't know, we credited up just such casing as was hauled to us, and we paid for the hauling.

Q. Did you ever ask of the Cleveland Oil Company any security for any notes? A. No, sir.

Q. You considered, however, that you had security in Dr. France's guarantee? [97]

A. I considered that we had security in the property, and as an additional safeguard, we had Dr. France's guarantee.

Q. What particular piece of property was it that you considered valuable?

A. Their property in the Kern River field was, according to conversations I had with Dr. France, yielding good productions, and I have gone over the property that they had at the Midway field, and it had more than a prospective valuation; it was adjoining the Buick Oil Company property, which is one of the best properties, we understand, in the State; it joined that.

Q. At that time, the Buick was not producing, was

(Testimony of John M. Sands.)

it? A. I am not certain.

Q. As far back as 1910?

A. I am not certain as to whether it was producing oil or not. Just at that particular time, I don't know whether those wells were producing. The trend of development was in that direction and valuations were high in that direction.

Q. Do you understand that as late as September and October, 1910, that they still had this valuable property up in the Midway field?

A. Yes; I knew that they had this property up there.

Q. Did you understand that they had a lease on it?

A. I was not certain as to whether it was a lease or whether they purchased it outright.

Q. About all you knew about it is what Dr. France told you about it?

A. Other than as to the location.

Q. I mean, he told you about the ownership of the company? [98]

A. Yes; but then I know as to its location. I consider the property valuable.

Mr. WHITAKER.—These are all of the letters pertaining to the Cleveland Oil Company. I would suggest that you keep them in chronological order, Mr. Crenshaw, because I am going to put them in evidence, every one of them.

Mr. CRENSHAW.—These old letters of 1909 are not material.

Mr. WHITAKER.—I think that they are very material. We are going to offer them, put them in the record.

(Testimony of John M. Sands.)

Mr. CRENSHAW.—You say all of these letters are going in, Mr. Whitaker?

Mr. WHITAKER.—Yes, every one of them.

Q. I will show you this letter, Mr. Sands, which is dated August 25th, the personal guarantee of W. A. France and G. G. Gillette, of a note for \$5,055.00. Please give me the circumstances of obtaining that guarantee from them. Why it was done?

A. This is an instance where they had asked for an extension. You see it states here clearly.

Q. Did you ever attempt to collect that note from Mr. Gillette, or was it paid by the Cleveland Oil Company?

A. Now, when that came due, December 31st, 1909, they paid \$3,000 on that.

Q. You mean the company?

A. It says, "cash to apply check #255." It must have been the company's check. Of course, I could easily ascertain.

Q. So far as you know, it was the company? Do you know whether the balance of the note was ever paid or not?

A. Yes, I can tell here in a moment. On February first, [99] they must have paid that according to that record. February 1, 1910, that record says that Check #1296 to take up note \$2,055.42, due February 28—and this note of February 28th is part of that note of December 31st, 1909, about which you inquired did we ever get the settlement.

Q. Mr. Sands, did you investigate the financial responsibility of Mr. France, at the time that you con-

(Testimony of John M. Sands.)

sidered this line of credit?      A. I did.

Q. What did you find?

A. I found that he was a man of considerable means, considerable property; there is letters here from the president of a bank here in this city, Mr. M. J. Monette, telling what he thinks of Mr. France.

Q. Do you know, October first, 1910, the occasion of writing that letter?

A. I don't know the occasion, because it was written in Columbus, Ohio, and I was here.

Q. Do you know whether that is a reply to any letter you had written?

A. No, only just an acknowledgment on his part that he had been personally responsible up until that date, October first, 1910.

Q. Upon receipt of that letter by you, did you make any investigation of the affairs of the Cleveland Oil Company?      A. No investigation.

Q. Notwithstanding the fact that he informed you that he would no longer be responsible and was not an officer?      A. There was no necessity. [100]

The REFEREE.—That is not the question.

Q. Did you ever make any investigation of the affairs of the Cleveland Oil Company after that date?

A. No, not to my knowledge.

Q. Will you examine this letter, dated November 5th, 1910, addressed to you by W. A. France—does it recall to you the letter to which that was a reply, which is referred to?

A. Why, no; my letter of November 5th should be here.



(Testimony of John M. Sands.)

Mr. WHITAKER.—You have not got that, I looked for that.

Q. Do you remember the contents of that letter?

A. Why, I can't remember the contents of that particular letter, only I know that he would have only one occasion to write to me and that was as he was president of the company, and my arrangements had been made with him.

Q. Do you remember whether in that letter you said anything to him about his own responsibility for the debt?

A. I cannot recollect, because I have not the letter here.

Q. Well, did you at any time try to collect any money from him on a personal account?

Mr. WHITAKER.—We object to that as already asked the witness and answered, and I put in "prior to the time of the adjudication" and the witness answered, "No."

Mr. CRENSHAW.—It is simply for the purpose of checking the account; this letter may refresh his memory.

The REFEREE.—Answer the question.

A. Not to my knowledge.

Mr. CRENSHAW.—I think that is all.

Cross-examination.

(By Mr. WHITAKER.) [101]

Q. Mr. Sands, how long have you been the manager of the R. H. Herron Company in California, approximately? A. Seven years.

Q. And during all of that time have you had charge

(Testimony of John M. Sands.)

of the credits of the company?     A. I have.

Q. During any of that time, did any of the district managers, either in Bakersfield, Taft, Maricopa or any other place in California, have any authority to extend large credit to any oil company without first being authorized by you?     A. They did not.

Q. Was it, or was it not, the universal rule and custom and instruction that each of such managers was to communicate with you whenever any large order was placed in the store?     A. Yes, sir.

Q. And is the order then followed or rejected according to your judgment?     A. It is.

Q. And do or do you not notify the district managers accordingly?     A. I do.

Q. I hand you a letter, dated February 18, 1909, to the R. H. Herron Company from J. L. Scott, and ask you if that contains the report that you received as to the company's holdings.     A. I recognize that.

Q. Who is Mr. J. L. Scott?

A. He is our division manager in the Kern River district.

Mr. WHITAKER.—We offer this letter in evidence for the [102] purpose of showing the report that was made to the R. H. Herron Company by its local manager as to the properties of the Cleveland Oil Company, all holdings.

Q. Did you rely upon the accuracy and correctness of the information contained in that letter?

A. I investigated the field at the first opportunity as well.

Q. Just answer the question. Did you rely upon

(Testimony of John M. Sands.)

the correctness and accuracy of the information contained in that letter?     A. Not entirely.

Q. Did you afterwards verify it?     A. I did.

The REFEREE.—It will be Claimant's Exhibit 3.

Q. I now hand you a carbon copy of a letter dated Los Angeles, May 10th, 1910. I will ask you to state whose signature that is at the bottom.

A. Mr. Lyon's.

Q. Who is Mr. Lyon?     A. Our secretary.

Q. Was he secretary of the company at that time?     A. Yes, sir.

Q. So that, as early as May, 1909, you notified the Bakersfield office as follows: "Oil Well Supply Company, Bakersfield, Cal., Gentlemen: Do not deliver any large amount of supplies to the Cleveland Oil Company without first getting authority from this office. You may deliver to them the little things they need to an amount not over \$100 if they require it, but all purchases in excess of the \$100 specified [103] must be referred to this office." Was that in accordance with your usual custom?     A. It is.

Mr. WHITAKER.—I am going to offer all of these at once.

Q. And that is the acknowledgment of the letter, is it, from your Mr. Scott? (Counsel produced document.)     A. It is.

Q. Now, I hand you a letter, or rather a carbon copy of a letter dated at Los Angeles, Cal., June 26th, 1909, addressed to Mr. J. L. Scott, Manager, Oil Well Supply Company, Bakersfield, Cal., and ask you if that is your signature.     A. It is.

(Testimony of John M. Sands.)

Q. Did you send that letter to Mr. Scott at the time, the original?     A. I did.

Mr. WHITAKER.—We offer that as a part of this exhibit.

Q. Now, I hand you a letter dated Bakersfield, Cal., October 16, 1909, on the letter-head of the Oil Well Supply Company, signed Oil Well Supply Co., per W. C. Hill, and ask you if you received that letter on or about that date.     A. We did.

Q. The letter being as follows (reads): “John M. Sands, Manager, Oil Well Supply Co., Los Angeles. Calif., Dear Sir: We learned to-day that the Associated Supply Company have attached the Cleveland Oil Company. The Cleveland Oil Company owes the Associated Supply Company approximately \$3,000. We got this information from their former superintendent, Mr. James Jones. We give you this for your information, and oblige. Yours truly, Oil Well Supply Company, per W. C. Hill.” [104]

Q. And subsequent to the date of that letter all of these sales were made to the Cleveland Oil Company by your company, under your instructions?

A. Yes, sir.

Q. I hand you a letter of three pages, dated from Columbus, Ohio, 12/23/1909, signed W. A. France. Do you know if that is the signature of Dr. France?

A. I recognize it as such. He states in there, “We have now eight producing wells and, as near as I can get at the facts, we are getting from 8,000 to 10,000 barrels of oil per month. We have been selling our oil as fast as we could produce it, and have sold some

(Testimony of John M. Sands.)

as high as 75 cents per barrel. We have just closed up a contract with some Boston people, who, I understand are very strong people financially, for the lease of our refinery for two years; also have contracted with them for 240 barrels of oil at the rate of 65 cents per barrel, which we are to furnish them at the rate of 10,000 barrels per month. This is to use in the refinery for making asphalt. Our refinery has a capacity of 500 tons of asphalt per month."

Q. What refinery did he refer to—the refinery owned by the Cleveland Oil Company?

A. It is one that we have a contract with.

Q. To purchase?

A. No, I think they had a contract for reduction.

Q. The Warren refinery?      A. I think so.

Q. Did you believe the statement contained in that letter?      A. I certainly did.

Q. And you relied upon that? [105]

A. Implicitly.

Q. Is that the letter which you wrote in reply to it? The other letter being dated Los Angeles, Cal., Dec. 28, 1909.      A. That is my reply.

Q. I will ask you whether this letter was sent by you, the original of it, to your house in Taft. (Counsel produces document.)      A. It was.

Q. Being of date "Los Angeles, California, January 11, 1910, Oil Well Supply Company, Taft, California. Cleveland Oil Company, Gentlemen: You are privileged to deliver the above company supplies to the amount of \$1500. For anything in excess of this amount, communicate with this office. They are



(Testimony of John M. Sands.)

owing us considerable money and they have not acquired the habit of discounting their bills, which is our reason for the limited credit. Yours very truly,  
J. M. Sands."

Mr. CRENSHAW.—I think we can save a lot of time. I will stipulate that you can put in these letters.

Mr. WHITAKER.—I simply want to get them before the referee.

The REFEREE.—If you want to call my attention to any others, you may read them.

Mr. WHITAKER.—I offer a letter from Dr. France of date January 17, 1910, to Mr. Sands—let me see—a letter of January 21st, 1910, to the Oil Well Supply Company, Bakersfield, Moron, Maricopa. That was a circular letter?

A. Yes, to those three stores.

Q. Instructing the three stores that further deliveries [106] of \$1,000 for the total three stores might be allowed to the company?

A. Yes, sir. We also offer a letter, dated Feb. 9, 1910, from W. A. France to John M. Sands; also letter dated Aug. 6, 1910, to John M. Sands from Oil Well Supply Company by George W. Church, dated at Bakersfield; also letter of Cleveland Oil Company dated August 6th, 1910, to Oil Well Supply Company, advising them of enclosed check for \$1,500. Likewise carbon copy of a letter from the R. H. Herron Company to the Cleveland Oil Company, dated August 10, 1910, advising the cancellation of the note for \$3,000; also receipt for \$1,526.23.

(Testimony of John M. Sands.)

Q. Now, this casing, Mr. Sands, which has been referred to, and is referred to in the letter of August 6th, 1910, from the Herron Company to the Oil Well Supply Company, was 1100' of 8 $\frac{1}{4}$ ", 28# Casing, and that was delivered by your company to the Cleveland Oil Company?

A. That is the casing that we received back, our casing that he had sold. That letter is giving them authority to deliver the casing.

Q. Was that casing delivered by your company?

A. I will have to look here and see, because I could not tell you.

Q. This letter of date August 6th, you testified in regard to it this morning?

A. I want to get it absolutely clear. May I read that letter?

Mr. WHITAKER.—Yes. (Witness consults document.)

A. My letter of August 6th calls for 1,100 feet of 8 $\frac{1}{4}$ " inch, 28# casing, and I see there was billed on August 10th, [107] 1,109 feet of 8 $\frac{1}{4}$ ", 36# casing.

Q. That is the same thing, is it not, with the exception that it is heavier? A. I think it is.

Q. How much does that amount to, that invoice?

A. Sixteen, eighty-six, thirty-two.

Q. Now, it was agreed that this should be paid for in cash, was it?

A. Yes; this says we are to have its equivalent in cash.

Q. Well, was it?

A. I will tell you in a minute—no.

(Testimony of John M. Sands.)

Q. It was not paid in cash, but that was the agreement?     A. Yes, sir.

Q. Now, you did not receive any money according to your statement, until the 15th day of September, 1910, when you received \$2,000, I believe.

A. Yes, sir.

Q. Do you know whether that \$2,000 was intended to cover that casing?

A. It was intended to cover the casing; yes, sir.

Q. To which you have just testified?

A. Yes, sir.

Mr. WHITAKER.—We offer in evidence a note addressed to John M. Sands, San Francisco, dated Los Angeles, Cal., August 13, 1910, and signed by the secretary of the company.

Mr. WHITAKER.—Now, I call your attention, Mr. Sands, to a letter of date August 22d, 1910, and ask you who wrote that letter.

A. Mr. Lyon, our secretary. [108]

Mr. WHITAKER.—I think that is important, so I will read it. The letter is on the letter-head of the Oil Well Supply Company and is dated Los Angeles, Cal., Aug. 22d, 1910, addressed to Mr. John M. Sands, San Francisco, Calif. Dear Sir: Had a talk with Mr. Batchelder of the Cleveland Oil Company this morning. It seems that their refinery in the Kern River Field burned down Saturday and that they are having trouble in raising the \$1,700 necessary for the 1000 feet 8 inch casing for the Kern River Field. It seems that the National sent them a car of 8¼" to the Midway Field and by mistake

(Testimony of John M. Sands.)

their superintendent unloaded it and hauled it out. You know we gave them 1000 feet there and the result is that they have 2000 feet too much in the Midway field and have none in the Kern River. They have not taken care of their note due today. We are simply giving you this information that you may be in touch with the matter. Very truly yours, R. H. Herron Company, Walter Lyon, Secretary.

Q. Now, do you know whether any of this casing, that is, this 1000 feet, was any of the casing that was later returned to you?

A. Why, such casing as was returned to us was such casing as was delivered.

The REFEREE.—That is not the question. He wants to know whether that particular casing was returned.

A. I could not identify it; I would not know it.

Q. What was the size of the casing that was returned to the company in October?

A. The size of it was  $8\frac{1}{4}$ ", but I was trying to get the weight. There are so many different weights, and it is as [109] essential to know one as it is the other, I suppose. Well, I can easily ascertain by looking at the record; there is nothing in those papers which would show.

Q. At this time, you cannot state of your own knowledge what the size and weight of the casing was? A. I can state the size,  $8\frac{1}{4}$ ".

Q. Do you know whether or not that had been used in any wells?

A. You mean that casing that was returned?

(Testimony of John M. Sands.)

Q. Yes.

A. The casing that was returned had been used; it was so reported to me.

Q. Where?

A. By the Cleveland Oil Company.

Q. Where was it used?

A. In the Midway field.

Q. And you allowed them a credit of 75 per cent of the original cost?

A. Yes, sir, 75 per cent of the original cost.

Q. I will ask you whether or not you ever had occasion to take that casing from other companies?

A. Yes; it is quite common.

Q. Have you frequently done so?

A. Quite frèquently.

Q. What is the actual amount allowed as a credit to the company, assuming that the casing is in fairly good condition?

A. Twenty-five per cent from the price of new is an exceedingly liberal discount.

Q. Is that fair as between both parties? [110]

A. Yes, it is fair between both parties.

Q. Now, I hand you a letter, or rather a carbon copy of a letter, addressed to J. L. Scott, District Manager, dated October 26th, 1910, referring to casing, as follows (reads): "Dear Sir: We haven't received any record of the casing that we arranged to have returned by the Cleveland Oil Company to the Taft store. Please advise promptly." I show you that letter and the date for the purpose of refreshing your memory about that. When was it that it



(Testimony of John M. Sands.)

was agreed that you people should take back that 8 $\frac{1}{4}$  inch casing and credit the company?

A. Some time during October.

Q. That is about as near as you can place it?

A. It is within five or ten days.

Q. Prior to October 26th?      A. Yes, sir.

Mr. WHITAKER.—I offer that in evidence.

Q. I hand you a carbon copy purporting to be signed by the Cleveland Oil Company, by Edson France, treasurer, dated November 15, 1910, instructing the superintendent to deliver to Mr. J. L. Scott, your representative, the two pumps remaining on the property. Can you state whether the original was received by you about that time?

A. Yes, it was, because this is a copy of the original.

Mr. WHITAKER.—I offer that in evidence.

Q. And that is the letter stating when the pumps were returned, isn't it, Mr. Sands?      A. It is.

Mr. WHITAKER.—We offer in evidence the letter written by Dr. France dated November 5th, 1910, on the paper of the [111] Cleveland Oil Company.

Q. I hand you a circular, purporting to be sent out by the New York Midway Oil Company of date December 20th, 1910, relating to the reorganization of the Cleveland Oil Company. I will ask you if you received that.      A. I did.

Q. On or about that date?

A. Yes, it is dated December 20th—it may have been a day or two later.

(Testimony of John M. Sands.)

Q. It was on or about that time?

A. Yes, sir.

Q. Do you know where you received it from?

A. I can't— It came through the mail.

Q. Well, now, did you believe that that reorganization would be effected?      A. I believed so.

Q. Did you have any reason to think to the contrary up to the time the adjudication in bankruptcy was made, namely, on February 20th, 1911?

A. I had no reason to think that they were in a state of bankruptcy until that time.

Q. I hand you a letter of date November 5th, 1910, signed W. A. France, and ask you if you received that in the due course of the mail about that date.

A. I did. [112]

Mr. WHITAKER.—I think I would like to read this (reads): "November 5th, 1910, Mr. J. M. Sands, c/o R. H. Herron Company, Los Angeles, California. My Dear Mr. Sands,—A letter from your company received November 5th. In reply would say I presume that it would be more satisfactory to have a talk with my brother in regard to the affairs of myself and the Cleveland Oil Company. It was for that reason that I did not communicate direct with you. I am making arrangements to get back to Los Angeles as soon as possible. I feel quite sure if I were there that we could make everything satisfactory. If it is not too much trouble would like to have a copy of the letter referred to in regard to my guaranteeing payment of certain debts of the Cleveland Oil Company. We do not want any extra ex-

(Testimony of John M. Sands.)

pense made, expect to do everything possible to satisfy you in regard to the claims which you have either against me or the Cleveland Oil Company. ' The burning of our refinery and the bad luck in getting down our well in the Midway Field has set us back a little, but we are now making arrangements so that in a short time we expect to be able to satisfy all of our creditors. Would be glad to have you communicate with my brother as he can explain the matter better than I can write it. Would be glad to hear from you at any time. Yours truly, W. A. France.'"

Q. Did you believe that statement was true and correct?     A. I did.

Q. (By the REFEREE.) What date is that?

A. November 5th, 1910.

Q. And believed that the Cleveland Oil Company would [113] adjust its matters?

A. I did.

Mr. CRENSHAW.—I object to what the witness believes.

Mr. WHITAKER.—I think it goes to the gist of whether he believed that they are insolvent.

The REFEREE.—It is whether he had reasonable cause to believe.

Mr. CRENSHAW.—Yes, what a reasonable man would believe.

Mr. WHITAKER.—Well, of course I should have added that.

Q. Now, did you or did you not know, Mr. France, at that time the payment of fifty-two hundred dollars was made to you on the fifteenth day of Sep-

(Testimony of John M. Sands.)

tember, 1910, by the Cleveland Oil Company, that it was insolvent? A. Why, I did.

Q. That calls for yes or no.

(Question read by reporter.)

A. I believed that they were solvent.

Q. You did not know, then, that they were insolvent, if insolvent? A. I did not.

Q. Did you on or about the 26th day of October, the day you wrote that letter to your district manager in Taft in relation to the return of certain machinery, oil well casing which you had given them credit for at the rate of seventy-five per cent, on the purchase price, know that Cleveland Oil Company was insolvent, if insolvent? A. I did not.

Q. Did you at the time the two pumps were returned, which was November 25th, I think, 1910, and which you had agreed to [114] receive and credit the Cleveland Oil Company with, to the estimate of three hundred dollars, know that the Cleveland Oil Company was insolvent, if insolvent?

A. I did not.

Q. When you, Mr. Sands, received the two thousand dollars in cash which was paid to you by the Cleveland Oil Company on the 15th day of September, 1910, have reason to believe that any preference was intended to be given the R. H. Herron Company by such payment?

Mr. CRENSHAW.—Object to the question.

The REFEREE.—That is the thing we are trying to find out.

Mr. WHITAKER.—I have a right to ask that

(Testimony of John M. Sands.)

question, I think. Just to ask him whether he had. Of course I am aware that you have to find on that.

The REFEREE.—Is it right for the witness to decide that question himself?

Mr. WHITAKER.—He could not decide it, but I think he can state whether he had cause to believe it. I can leave out the word “reasonable.” I think I have a right to my answer.

The REFEREE.—Answer the question subject to the objection.

A. I did not.

Q. Did you when the casing was returned?

A. I did not.

Q. Did you when the pumps were returned?

A. I did not.

The REFEREE.—I suppose you make the same objection.

Mr. CRENSHAW.—Yes, sir.

The REFEREE.—The same ruling. [115]

Q. Did you have any knowledge of the financial condition of the company, Mr. Sands, up to the time that this report was published or the articles in the newspaper which have been introduced?

A. Not until Mr. Mushet's report was published.

Q. And that information, you got from this exhibit 3? A. Yes, sir.

Q. By the way, Mr. Sands; can you state whether or not the average credit given by your company to all of the oil companies is above or below fifteen hundred dollars?

A. Below fifteen hundred dollars.



(Testimony of John M. Sands.)

Q. Was the fact that you desired your local managers, and so instructed them, to curtail credit at certain periods, due to the fact that you considered the company bankrupt, or insolvent, or simply a business precaution according to your usual custom?

A. Just the usual custom and a business precaution.

Q. You, I believe, early in the commencement of the business with the Cleveland Oil Company, notified your manager at Bakersfield not to deliver over one hundred dollars' worth on their own responsibility on May 10th, 1909?      A. I did.

Q. And were all large orders over that referred first to you?      A. They were.

Q. Now, after you received this information October 6th, 1909, that the Cleveland Oil Company had been attached by the Associated Supply Company, for the sum of three thousand dollars, you still continued selling them goods? [116]

A. Yes, we sold them a great many goods after that date as evidenced by the records here.

Q. Now, after you had written that letter of July 22, 1910, I think that was the date, again instructing the local managers not to deliver goods over the sum of one hundred dollars, you sold them in the month of July, did you not, something over thirty-five hundred dollars?      A. We did.

Q. And in the month of August nearly three thousand dollars?      A. We did.

Mr. WHITAKER.—We offer these in evidence as one lot.

(Testimony of John M. Sands.)

The REFEREE.—It will be exhibit No. 4.

Mr. WHITAKER.—I think that is all.

The REFEREE.—Any redirect?

Redirect Examination.

(By Mr. CRENSHAW.)

Q. Mr. Sands, with reference to that account to which you were testifying, it shows all of the sales to the Cleveland Oil Company that you ever had with him? A. It does.

Q. There are none subsequent to the dates on that account? A. No, sir.

Q. Now, with reference to Mr. Mushet's report which you say you saw published. Do you remember what day you saw that?

A. I submitted this evidence. I notice that here. It was marked, I think, exhibit 2, to-day, and that was December 20th. [117]

Q. And you did not see any before that?

A. None. I think that was the first public record.

Q. But before that time, you knew that Mr. Mushet was making an examination of the books?

A. No, that was the first public record.

Q. Well, if it was published in the newspapers, before that, would you have seen it in the "Times"?

Mr. WHITAKER.—Object to his calling for the conclusion of the witness.

The REFEREE.—Objection sustained.

Mr. CRENSHAW.—I do not know about these newspapers. I think it is competent, for it shows a means of investigation; if he had investigated, he would have obtained information.

(Testimony of John M. Sands.)

The REFEREE.—He had a right to go to the books of the company, and anything that he could have gotten out of the books of the company he was chargeable with notice of.

Mr. CRENSHAW.—Unless the books—

The REFEREE.—I do not suppose that the newspapers could have found out any more than the books showed.

Mr. CRENSHAW.—I think that is all.

**[Testimony of W. J. Batchelder, for the Trustee.]**

W. J. BATCHELDER, a witness produced on behalf of the trustee, being first duly cautioned, and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. CRENSHAW.)

Q. You are a resident of Los Angeles? [118]

A. Yes, sir.

Q. How long have you lived in this city?

A. Four years.

Q. When were you first connected with the Cleveland Oil Company?

A. When it was incorporated.

Q. You were an officer of the company in the fall of 1910 during the months of August, September, October, November and December?

A. Yes, sir.

Q. What office did you hold? A. Secretary.

Q. Were you also treasurer? A. No, sir.

Q. There was a treasurer of the company?

A. Yes, sir.

(Testimony of W. J. Batchelder.)

Q. Are you familiar with its assets and liabilities?

A. More or less.

Q. Was there any particular change in the assets of the company between the 12th day of September and the date when it went into bankruptcy?

A. No, sir.

Q. Any important change in its liabilities?

A. No.

Q. Were you familiar with the R. H. Herron Company and the Cleveland Oil Company's account with them?      A. More or less.

Q. Did you ever have any conversation with any of the employees of the R. H. Herron Company concerning that account? [119]

Mr. WHITAKER.—That is objected to, unless it is shown that the employee whom Mr. Batchelder talked with occupied a position of trust with the company, or were agents. He might have talked with a teamster.

Mr. CRENSHAW.—We will find out first whom he talked with; that is just preliminary.

The REFEREE.—Answer yes or no.      A. Yes.

Q. Whom did you talk with?

A. Well, are you stating at a certain time?

Q. I mean during those fall months.

A. I will have to change that—no.

Q. Did you ever have any conversation with Mr. Sands?

Mr. WHITAKER.—You mean during those fall months?

Q. Commencing with the month of August?

(Testimony of W. J. Batchelder.)

A. I will have to change my answer back to yes.

Q. About when was that, if you remember?

A. In September or October.

Q. What was the nature of the conversation? Give the details of it to the best of your recollection.

A. I could not do that, because I did not have direct conversation with him. I recall his coming into the room, which was occupied by Edson France, the treasurer and myself, and consequently I could not help overhearing some of the conversation that took place.

Q. Can you give us that conversation, or the gist of it? A. I could not do it.

Q. You don't know what they were talking about?

A. It was in connection with money. [120]

Q. Was Mr. *France* demanding money from the company? A. Not to my knowledge.

Q. Do you know what he was doing up there?

A. We had an active account for oil well supplies, so it was in connection with that account.

Q. Do you know whether or not the account was very active in October?

A. I do not think it was very active in October.

Q. Is it not a fact that you were not buying anything in October from them, and didn't buy anything? A. No, not to my knowledge.

Q. Do you know whether you bought anything or not? A. I don't remember.

Q. Do you know whether or not your credit had been cut off? A. No, sir; I don't know that.

Q. Is that the only time that you ever heard any



(Testimony of W. J. Batchelder.)

conversation about this account?

A. With reference to those three months; that is all.

Q. Did you ever hear any conversation about the account before that time?

A. Yes, from the time that the company was incorporated.

Q. You handled it up to about what period?

A. I don't know what you mean by handling. I was secretary of the company. I was not handling it, not the accounts.

Q. Who had charge of the accounts, and most of the negotiations? A. The treasurer.

Q. Who was the treasurer?

A. T. M. Montgomery, before Edson France came out. [121]

Q. Do you know what date, or about what date, he ceased to be treasurer and Edson France went in?

A. He resigned early in January, 1910, and Edson France then was elected to take his place as representative of Doctor France, the president, and was treasurer of the company.

Q. Then, the R. H. Herron Company never consulted with you about these accounts during the fall months? A. They never did; no, sir.

Q. Did you ever pay them any money?

A. As secretary I signed my name to checks. The checks would be signed by the president, or treasurer, and countersigned by the secretary, and I was the secretary so I countersigned the checks and notes.

Mr. CRENSHAW.—I think that is all, if this witness did not have any conversation.

Mr. WHITAKER.—That is all.

Mr. CRENSHAW.—That is all of our case.  
[122]

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**[Statement of Account of Cleveland Oil Company  
With R. H. Herron Company, July, 1910, to January 12, 1911.]**

John Eaton,  
President of both Companies.

John M. Sands,  
Vice-president and Treasurer.  
R. H. Herron Co.

Prices subject to change without  
notice.

Richard E. Small,  
Secretary, R. H. Herron Co.  
Transportation Company's Receipt  
Constitutes Delivery. Our Responsibility  
Then Ceases.

**R. H. HERRON CO.**  
Affiliated with  
**OIL WELL SUPPLY CO.**  
of Pittsburgh, Penn.

Branches:  
Bakersfield.  
Coalinga.  
Maricopa.  
San Francisco.  
McKittrick.  
Orcutt.  
Moron.  
Sisquoc.

Address all communications to Oil Well Supply Co.

All remittances should be made to Los Angeles.

Los Angeles, Cal., Jan. 12, 1911.

**Terms:**

Monthly settlements are required on  
all running accounts.

2% discount will be allowed for cash  
payment on or before the 20th of  
month, for purchases of preceding  
month, except on Freight, Expense  
Items, or Special Net Sales.

Interest will be computed at regular  
rates after the last day of the  
month following purchases.

**Phones:**

Sunset Main 8088

Home 10721

AT JUNCTION OF NORTH MAIN & ALAMEDA STS.

**SOLD TO—Cleveland Oil Company.**

**SHIPPED TO**

**FROM—**

**YOUR ORDER—**

**STATEMENT.**

**OUR ORDER.**

**[123]**

## EXHIBIT #1.

1910.

July.	Open Account.....	\$3547.23	
August.	“ “ .....	2920.76	
September.	“ “ .....	65.54	6533.53
Feb. 4/11.	Charge on Casing returned Oct. 31, 1910, account cartage .....		143.00
1910.			6676.53
Dec. 1.	Credit for pumps returned.....	300.00	6376.53

## EXHIBIT #2.

1910.

Aug. 21.	Note due, dated May 23, 1910, with 6% interest from date.....		2868.15	
Sept. 10.	Note due, dated May 9, 1910, with 7% interest from date.....		4052.79	
Oct. 23.	Note due, dated June 23, 1910, with 7% interest from date.....		3198.31	
Nov. 15.	Note due, dated July 16, 1910, with 7% interest from maturity.....		2607.43	
			12726.68	
Oct. 31.	Casing returned amount \$2823.37 to apply on note due Aug. 21, \$2868.15 less interest to maturity. 43.02	2780.35		
		\$2000.00		
Sept. 15	Payment made to ap- ply on note due Sept. 10, \$4052.79 less interest to maturity. 94.50	1905.50	4685.85	8040.83
				14417.36

## INTEREST.

Interest on July a/c \$3547.23	Sept. 1 to Jan. 1, '11. @ 7%	82.77	
“ “ Aug. a/c 2920.76	Oct. 1 to Jan. 1, '11. @ 7%	45.86	
“ “ Sept. a/c 65.54	Nov. 1 to Jan. 1, '11. @ 7%	.76	
“ “ Note due Aug. 21 \$2911.17	Aug. 21 to Oct. 31, '10 .....	@ 7%	39.05
“ “ Note balance \$87.80	Nov. 1 to Jan. 1, '11. @ 7%	1.02	
“ “ “ \$2147.29	Sept. 10 to Jan. 1, '11. @ 7%	45.92	
“ “ “ due Oct. 23 \$3198.31	June 23 to Oct. 23, '10 .....	@ 7%	74.62
“ “ Note due Oct. 23 \$3272.93	Oct. 23 to Jan. 1, '11 .....	@ 7%	43.30
“ “ Note due Nov. 15 \$2607.43	Nov. 15 to Jan. 1, '11 .....	@ 7%	22.83
“ “ Principal \$14417.36	from Jan. 1 to Jan. 12, '11 .....	@ 7%	30.83
			386.96

[Letter Dated May 10, 1909, from R. H. Herron Company to Oil Well Supply Company, Bakersfield.]

Los Angeles, Cal., May 10, 1909.

Oil Well Supply Co.,

Bakersfield, Cal.

CLEVELAND OIL CO.

Gentlemen:—

Do not deliver any large amount of supplies to the Cleveland Oil Co., without first getting authority from this office. You may deliver to them the little things they need to an amount not over \$100.00, if they require it, but all purchases in excess of the \$100.00 specified must be referred to this office.

Yours very truly,

R. H. HERRON CO.,

Affiliated with the OIL WELL SUPPLY CO. of  
Pittsburgh, Penn.

WALTER H. LYON,

Secretary.

WHL/McD. [125]

**[Letter Dated May 11, 1909, from R. H. Herron Company to Oil Well Supply Company, Los Angeles.]**

John Eaton,  
President of both Companies.

John M. Sands,  
Vice-president & Treasurer.  
R. H. Herron Co.

Walter H. Lyon,  
Secretary R. H. Herron Co.

Main Office:  
Los Angeles, Cal.

Branches:  
San Francisco, Cal.  
Coalinga, "  
Bakersfield, "  
Orcutt, "  
Maricopa, "  
McKittrick, "  
King City, "

Machine and Forge Works:  
Los Angeles and Coalinga.

**R. H. HERRON CO.**

Affiliated with

**OIL WELL SUPPLY CO.**

of

Pittsburg, Pa.

Bakersfield, Calif., May 11, 1909.

Oil Well Supply Co.,

Los Angeles, Calif.

Gentlemen:—

We are in reply to your letter asking us not to deliver any more supplies to the Cleveland Oil Co. About an hour or two previous to our receiving this letter we had delivered to them 1000 ft. 3" Tubing and have on file at the present time an order for 1000 ft. more 3" Tubing also 1000 ft.  $\frac{7}{8}$ " Imperial Rods.

We judge from the tone of your letter that you do not wish us to deliver these goods. We now have a call in for Mr. Sands and will possibly get him before your office closes this evening, if so we will explain this matter to him and will no doubt be advised as



to the course we shall pursue.

Yours truly,

R. H. HERRON CO.

Affiliated with the OIL WELL SUPPLY CO. of  
Pittsburg, Penn.

J. L. SCOTT.

RECEIVED

R. E. Small

May 1 \_\_\_\_\_

Ans'd \_\_\_\_\_ Ref. to \_\_\_\_\_

A.M. 7/8/9/10/11/12 \_\_\_\_\_

[126]

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[Letter Dated June 26, 1909, from R. H. Herron  
Company to J. L. Scott, Manager Oil Well Sup-  
ply Company, Bakersfield.]

Los Angeles, Cal., June 26, 1909.

CLEVELAND OIL CO.

Mr. J. L. Scott, Mgr.,

OIL WELL SUPPLY CO.,

Bakersfield, Cal.

Dear Sir:—

We are in receipt of your favor of the 25th. Have had a call in at the company's office for Mr. Montgomery, who represents Dr. France. I want to let him know that we understand the conditions at Bakersfield, and that would have a tendency to relieve the anxiety of the teamsters, for doubtless he will get busy and send in some cash. Mr. Gillette is in the East or we would take the matter up with him.

There are many instances where we can be of value

to a company as well as ourselves by passing on such information. Most companies appreciate a favor of this kind, and of course we always try to discern this before presenting the information.

For your own guidance, don't deliver them any goods to large extent until you are instructed from this office or until you have received notice that they have made a further cash payment.

Yours truly,

R. H. HERRON CO.

Affiliated with the OIL WELL SUPPLY CO. of  
Pittsburg, Penn.

JOHN M. SANDS,  
Treasurer.

JMS/EVM. [127]

[Letter Dated October 16, 1909, from Oil Well Supply Company to John M. Sands, Manager Oil Well Supply Company, Los Angeles.]

John Eaton,  
President of both Companies.

John M. Sands,  
Vice-president & Treasurer.  
R. H. Herron Co.

Walter H. Lyon,  
Secretary R. H. Herron Co.

Main Office:  
Los Angeles, Cal.

Branches:  
San Francisco, Cal.  
Coalinga, "  
Bakersfield, "  
Orcutt, "  
Maricopa, "  
McKittrick, "  
King City, "  
Midway, "

Machine and Forge Works:  
Los Angeles and Coalinga.

**R. H. HERRON CO.**

Affiliated with

**OIL WELL SUPPLY CO.**

of

Pittsburg, Pa.

Bakersfield, Calif., Oct. 16, 1909.

[In pencil:]

Jno. M. Sands, Mgr.,

1260. "

Oil Well Supply Co.,

Cleveland Oil Co.

Los Angeles, Calif.

Dear Sir:—

We learned to-day that the Associated Supply Co., have attached the Cleveland Oil Co. The Cleveland Oil Co. owe the Associated Supply Co. approximately \$3,000.00. We got this information from their former superintendent, Mr. James Jones.

We give you this for your information, and oblige.

Yours truly,

**OIL WELL SUPPLY CO.,**

Per W. C. HILL. [128]

[Letter Dated December 23, 1909, from W. A. France  
to John M. Sands.]

THE FRANCE MEDICAL INSTITUTE CO.

Chronic Diseases a Specialty.

Nos. 38 & 40 West Gay Street.

Established

1886

Telephone

2862

Columbus, O. 12/23/1909.

[In pencil:]

1260.

Cleveland Oil Co.

Jno. M. Sands, Vice-pres.,

R. H. Herron Company,

Los Angeles, Calif.

My dear Mr. Sands:—

I thought I would write you a few lines to let you know that I am still alive and doing business as usual. I arrived home November 1st. Since coming home, I have kept in touch with our oil properties in California almost as well as if I was at our office in Los Angeles; receiving a letter nearly every day from our Superintendent in the field, as well as from our office in Los Angeles. Things have been going along very nicely with us. We have now eight producing wells, and as near as I can get at the facts, we are getting from 8,000 to 10,000 barrels of oil per month. We have been selling our oil as fast as we could produce it, and have sold some as high as 75 cents per barrel. We have just closed up a contract with some Boston people, who I under-

stand are very strong people financially, for the lease of our Refinery for two years; also have contracted [129]

THE FRANCE MEDICAL INSTITUTE CO.

Chronic Diseases a Specialty.

Nos. 38 & 40 West Gay Street.

Established

1886

Telephone

2862

Columbus, O. 12/23/1909.

Mr. Sands—2.

with them for 240,000 barrels of oil at the rate of 65 cents per barrel, which we are to furnish them at the rate of 10,000 barrels per month. This is to use in the Refinery for making asphalt. Our Refinery has a capacity of 500 tons of asphalt per month.

We are now putting down two more wells; one on the Kern River field, and the other well, which you know of, in Midway. Everything seems to look very promising for our well in Midway. As you undoubtedly know, they have made some good strikes there within the past few weeks. I will enclose you a statement of the Cleveland Oil Co's. property, so that you can have some idea of our holdings.

The \$5,055.00 note which becomes due, I think January 1st, will be paid. I see that there is another note of \$3,691.88 of the France Oil Co., or W. A. France, on which I would like to have a little extension of time. I expect to be in Los Angeles sometime during next month. Money that has been raised for the [130]



## THE FRANCE MEDICAL INSTITUTE CO.

Chronic Diseases a Specialty.

Nos. 38 &amp; 40 West Gay Street.

Established

1886

Telephone

2862

Columbus, O. 12/23/1909.

Mr. Sands—3.

development of our property has nearly all been raised by myself. The \$5,055.00 which we promised you to pay without fail when due, I have sent to California, so that you will be sure of that note being paid.

Everything is going along very nicely with me; although it requires considerable money to get things started. As I presume you know, I am interested in the Bankers Oil Co., and own a fifth of it. We are starting to develop that property, and as I understand it, have started to drill four wells. All these things have kept me hustling around to get my matters in shape to get ready money. You need have no fears in regard to any claims you have against me or the Cleveland Oil Co.'s property, as we will get there if you will have a little patience with us.

I would be pleased to hear from you.

Yours truly,

W. A. FRANCE.

WAF/HM.

[In pencil:] 3691.88. Feb. 1st. [131]

[Letter Dated December 28, 1909, from R. H. Herron  
Company to Dr. W. A. France.]

[In pencil:] 1260.

Los Angeles, California, December 28th, 1909.  
Dr. W. A. France,  
38-40 West Gay Street,  
Columbus, Ohio.

Dear Mr. France:

Am pleased to receive your letter of the 23d inst. and am most interested in the report enclosed. It is very evident that you have valuable properties. Just at this particular time interest is being taken in the section near the California Midway and understand it will soon be in.

The contract that you have for sale of the oil with the Cleveland Oil Co. is a very good one. Mr. Montgomery was in the other day and wanted to renew \$2,000.00 of the Cleveland Oil Co. note due December 31st for \$5,055.00 and granted him the privilege of a sixty-day renewal for the \$2,000.00. At that time I was counting on the payment of the France Oil Co. note for \$3,691.88, which would be due on February 1st, but since the receipt of your letter, I conclude it is more agreeable to you to make payment in full of the Cleveland Oil Co. note, in which event we will grant you a sixty-day renewal of the France Oil Co. note which is to bear your personal endorsement. As the note of the France Oil Co. is not due until February 1st and as you have arranged to be in Los Angeles before that date, we will not send the

note to you for your personal endorsement as you will be on the ground to conclude the matter.

With kindest regards, we remain,

Yours very truly,

R. H. HERRON CO.

Affiliated with the OIL WELL SUPPLY CO., of  
Pittsburgh, Penn.

JOHN M. SANDS,

Treasurer.

JMS/R. [132]

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[Letter Dated January 11, 1910, from R. H. Herron  
Company to Oil Well Supply Company, Taft.]

[In pencil:] 1260.

Los Angeles, California, January 11th, 1910.

Oil Well Supply Co.,

Taft, California.

Cleveland Oil Company.

Gentlemen:—

You are privileged to deliver the above company supplies to the amount of \$1500.00. For anything in excess of this amount, communicate with this office. They are owing us considerable money and they have not acquired the habit of discounting their bills, which is our reason for the limited credit.

Yours very truly,

R. H. HERRON CO.

Affiliated With the OIL WELL SUPPLY CO., of  
Pittsburgh, Penn.

JOHN M. SANDS,

Treasurer.

JMS/R. [133]

[Letter Dated January 17, 1910, from W. A. France  
to John M. Sands.]

THE FRANCE MEDICAL INSTITUTE CO.

Chronic Diseases a Specialty.

Nos. 38 & 40 West Gay Street.

Established

1886

Telephone

2862

Columbus, O., January 17, 1910.

Jno. M. Sands, Sec'y.

R. H. Herron Co.,

Los Angeles, Calif.

Dear Sir:—

Yours of the 11th received. I was very glad to hear from you, and to know that everything would be satisfactory in regard to the extension of time on the France note, if the balance of the Cleveland Oil Co. note, namely: \$2,055.42, was paid when due. I am not sure whether that note is due Feb. 1st, or March 1st, but I presume Mr. Montgomery will inform me.

I expect to be in Los Angeles sometime next month, and will be very glad to meet you and tell you all about our properties. I am investing a great deal of money at this time, and it keeps me on the move to keep things going.

Will be glad to hear from you at any time.

Yours truly,

W. A. FRANCE.

WAF/HM.

[In pencil:] Note Cleveland Oil Co. Due 2/28, 2055.42. Note France Oil Co. Due 2/1, 3691.88.

[134]

[Letter Dated January 12, 1910, from R. H. Herron Company to Oil Well Supply Company, Bakersfield, Moron, Maricopa.]

Los Angeles, Calif., Jan. 21, 1910.

Oil Well Supply Company,

Bakersfield, Moron, Cleveland Oil Company.  
Maricopa.

Gentlemen:—

The amount of their open account is \$4,819.58.

In addition to this they owe us a note due on the 28th day of February for \$2,055.42, and another due on the 15th of February for \$6,617.66. We feel this is quite enough that is providing the information, which was given us by Mr. Scott when at Bakersfield the other day, is correct to the effect that they were owing considerable sums for lumber bills, and there were other creditors around for other small bills who were unable to get their money.

We would be glad to have a report from each representative to whom this is directed telling us as soon as possible regarding their holding in your respective district.

In the meantime we are going to permit you to make further deliveries of \$1,000.00. This does not mean for each special store, but \$1,000.00 for the three stores. So please keep in touch so as to see that the instructions are not in any way violated.

Yours truly,

R. H. HERRON CO.

Affiliated with the OIL WELL SUPPLY CO. of  
Pittsburg, Penn.

JOHN M. SANDS,

JMS/HR. [135]

Treasurer.



THE FRANCE MEDICAL INSTITUTE CO.

Chronic Diseases a Specialty.

Nos. 38 & 40 West Gay Street.

Established

1886

Telephone

2862

Columbus, O., Feb. 9, 1910.

Mr. Jno. M. Sands,

c/o R. H. Herron Co.,

Los Angeles, Calif.

My dear Mr. Sands:—

We are arranging to put down three or four more wells on our Cleveland Oil Co. property in the Kern River field.

I have written Mr. Montgomery that if he could make the proper arrangements with you, and if you would do as well by us as any other firm, that it would greatly please me for us to do all the business with you that we possibly could; that I felt you knew something about my responsibility, and that I would sooner have our business confined to a few people rather than to divide it up among a half-dozen.

Would like to have you see Mr. Montgomery, and give him figures on the supplies which we will have to use within a short time.

We feel that we are getting things arranged here in the East so that we will get along and perhaps be able to pay our bills a little more promptly, but even if they are not fully paid up within 30 or 60 days, we feel that we can satisfy you that you are taking no chance in accommodating us as you have in the past.

Expect to be out there during this month. Will notify you as soon as I get to Los Angeles, as I am very anxious to see you and talk over our business affairs.

Yours truly,

W. A. FRANCE. [136]

[Letter Dated August 5, 1910, from Oil Well Supply Company to John M. Sands.]

[In pencil:] 1260.

John Eaton,  
President of both Companies.

John M. Sands,  
Vice-president & Treasurer.  
R. H. Herron Co.

Walter H. Lyon,  
Secretary R. H. Herron Co.

Main Office:  
Los Angeles, Cal.

Branches:  
San Francisco, Cal.  
Coalinga, "  
Bakersfield, "  
Orcutt, "  
Maricopa, "  
McKittrick, "  
King City, "  
Midway, "

Machine and Forge Works:  
Los Angeles and Coalinga.

**R. H. HERRON CO.**

Affiliated with

**OIL WELL SUPPLY CO.**

of

Pittsburg, Pa.

Bakersfield, Cal., August 5, 1910.

Cleveland Oil Co.,

Mr. John M. Sands, Manager,

Oil Well Supply Company,

Los Angeles, Cal.

Dear Sir:—

We are delivering goods to the Cleveland Oil Company in small quantities almost daily since our telephone conversation of a few days ago when you advised that you expected a settlement from them.

The amounts are not large but they have exceeded

the \$100.00 limit you placed in your letter of the 22d ult. This you will remember was done on your authority but we would like to be advised if we shall communicate with you should they want goods for any large amount now, say \$200.00 or over or shall we deliver same as before receiving your letter of the 22nd ult.

Yours very truly,  
OIL WELL SUPPLY COMPANY,  
Per GEO. W. CHURCH. [137]

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[Letter Dated August 6, 1910, from Cleveland Oil Company to Oil Well Supply Company, Los Angeles.]

[In pencil:] 1260.

W. A. France, Pres. T. M. Montgomery, Treas.

Wm. J. Batchelder, Secy.

CLEVELAND OIL COMPANY,  
426-427 H. W. Hellman Building.

Phones:

Home A8726

Sunset Bway 1732

Los Angeles, Cal., Aug. 6, 1910.

Oil Well Supply Co.,  
Los Angeles, Cal.

Gentlemen:—

Enclosed we hand you check for \$1500 which please credit to our account, acknowledge receipt, and oblige.

Yours very truly,

CLEVELAND OIL CO.  
By W. J. BATCHELDER,  
Secy. [138]

[Letter Dated August 6, 1910, from R. H. Herron  
Company to Oil Well Supply Company, Taft.]

[In pencil:] 1260.

Los Angeles, California,  
August 6th, 1910.

Oil Well Supply Co.,  
Taft, California.

Gentlemen:— Cleveland Oil Company.

Confirming our telephone conversation of yesterday, you have the privilege of delivering the Cleveland Oil Company 1100' of 8 $\frac{1}{4}$ " 28# Casing. This is granted for the reason they are to pay us its equivalent in cash, today.

Yours very truly,

R. H. HERRON CO.

Affiliated with the OIL WELL SUPPLY CO. of  
Pittsburgh, Penn.

JOHN M. SANDS,  
Treasurer.

JMS/R. [139]

**[Letter Dated August 10, 1910, from R. H. Herron  
Company to Cleveland Oil Company.]**

Los Angeles, Cal., Aug. 10, 1910.

Cleveland Oil Co.,

426 H. W. Hellman Bldg., City.

Gentlemen:—

We are handing you herewith canceled note dated  
June 23, 1910, for \$3,000.00; also receipt for \$1526.83.

Yours truly,

R. H. HERRON CO.

Affiliated with the OIL WELL SUPPLY CO. of  
Pittsburgh, Penn.

JOW-McD.

Encs. [140]

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**[Letter Dated August 13, 1910, from R. H. Herron  
Company to John M. Sands.]**

[In pencil:] 1260.

Los Angeles, Cal., Aug. 13, 1910.

Mr. John M. Sands, CLEVELAND OIL CO.,  
San Francisco, Cal. WHL-8/13/10.

Dear Sir:—

A day or two after you left here the Moron store called us by 'phone and wanted to know if they should deliver to the Cleveland Oil Co. a full car of 81¼" 36# casing in place of the 1100' 81¼" 36# which you authorized. I told them if it was necessary they could deliver up to 1200' as they required that amount on their well, but not to deliver a full car load.



Bakersfield called up and said they wanted 500' 10" 40# casing. In instructed them not to deliver it. I called Judge Campbell on the 'phone and advised him that his superintendent wished the pipe and he stated he would investigate and advise us. So far we have heard nothing from him. The Judge did not seem to be at all hurt over the transaction but rather seemed to appreciate the fact that it gave them an opportunity to keep track of their purchases and make arrangements from the main office.

The Cleveland Oil Co., as you will doubtless remember paid the balance of the \$3000.00 note last Monday, but have paid us nothing on the open account.

Very truly yours,

R. H. HERRON CO.

Affiliated with the OIL WELL SUPPLY CO. of  
Pittsburgh, Penn.

WALTER H. LYON,

Secretary.

WHL/McD. [141]

[Letter Dated August 22, 1910, from Walter H. Lyon  
to J. M. Sands.]

[In pencil:] 1260

John Eaton,  
President of both Companies.

John M. Sands,  
Vice-president & Treasurer.  
R. H. Herron Co.

Walter H. Lyon,  
Secretary R. H. Herron Co.

Main Office:  
Los Angeles, Cal.

Branches:  
San Francisco, Cal.  
Coalinga, "  
Bakersfield, "  
Orcutt, "  
Santa Maria, "  
Maricopa, "  
Moron, "  
McKittrick, "

Machine and Forge Works:  
Los Angeles and Coalinga.

**R. H. HERRON CO.**

Affiliated with

**OIL WELL SUPPLY CO.**

of

Pittsburgh, Pa.

Address all Communications to "Oil Well Supply  
Co."

Los Angeles, Cal., Aug. 22, 1910.

Mr. John M. Sands,

San Francisco, Calif.

Dear Sir:—

CLEVELAND OIL CO.  
"In Reply Please Refer to"  
WHL-8/22-10

Had a talk with Mr. Batchelder of the Cleveland Oil Co. this morning. It seems that their refinery in the Kern River Fields burned down Saturday, and that they are having trouble in raising the \$1700.00 necessary for the 1000' 8" casing for the Kern River Field.

It seems that the National sent them a car of 81¼" to the Midway field, and by mistake their Supt. un-

loaded it and hauled it out. You know we gave them 1000' there and the result is, that they have 2000' *feet* too much in the Midway field and have none in the Kern River.

They have not taken care of their note due today.

We are simply giving you this information that you may be in touch with the matter.

Very truly yours,

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_.

WALTER H. LYON,

Secretary.

WHL—McD.

[In pencil:]

Keep after them at least twice a day.

Make them come through.—J. M. S. [142]

[Letter Dated October 26, 1910, from R. H. Herron  
Company to J. L. Scott.]

Los Angeles, California, October 26th, 1910.

Mr. J. L. Scott, District Manager,

R. H. Herron Co., Affiliated with Oil Well Supply Co. Pittsburgh, Pa., Taft, Calif.

Dear Sir:—

We haven't received any record of the Casing that we arranged to have returned by the Cleveland Oil Company, to the Taft store. Please advise promptly.

Yours very truly,

R. H. HERRON CO.,

Affiliated with the OIL WELL SUPPLY CO. of  
Pittsburgh, Penn.

JOHN M. SANDS,

Treasurer.

JMS/R. [143]

[Letter Dated November 5, 1910, from W. A. France  
to J. M. Sands.]

[In pencil:] 1260

THE FRANCE MEDICAL INSTITUTE CO.

Chronic Diseases a Specialty.

Nos. 38 & 40 West Gay Street.

Established

1886

Telephone

2862

Columbus, O. Nov. 5, 1910.

Mr. J. M. Sands,

c/o R. H. Herron Co.,  
Los Angeles, Cal.

[In pencil:]  
Cleveland Oil Co.

My dear Mr. Sands:—

A letter from your company received November 5th. In reply, would say I presume that it would be more satisfactory to have a talk with my brother in regard to the affairs of myself and The Cleveland Oil Co. It was for that reason that I did not communicate direct with you. I am making arrangements to get back to Los Angeles as soon as possible. I feel quite sure if I were there that we could make everything satisfactory.

If it is not too much trouble, would like to have a copy of the letter referred to, in regard to my guaranteeing payment of certain debts of the Cleveland Oil Co. We do not want any extra expense made, and expect to do everything possible to satisfy you in regard to the claims which you have, either against me or the Cleveland Oil Co. The burning of our



refinery and the bad luck in getting down our well in the Midway field has set us back a little, but we are now making arrangements so that in a short time we expect to be able to satisfy all of our creditors. Would be glad to have you communicate with my brother, as he can explain the matter better than I can write it. Will be glad to hear from you at any time.

Yours truly,

W. A. FRANCE.

(Endorsed:) U. S. District Court No. 686. Claimant—Exhibit No. 4. Filed July 25, 1912. Helm, Referee. [144]

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**[Letter Dated November 15, 1910, from Cleveland Oil Company to Mr. Ware.]**

[In pencil:] 1260.

Los Angeles, California, November 15th, 1910.

Mr. Ware, Supt.,

Cleveland Oil Co., Midway, California.

Dear Sir:—

This will instruct you to deliver to Mr. J. L. Scott, representative of the R. H. Herron Company, or bearer, the two Pumps that are on our property.

Yours very truly,

CLEVELAND OIL COMPANY.

[In pencil:] Signed (Edson France) Treas.

[145]

[Letter Dated November 25, 1910, from J. L. Scott  
to John M. Sands.]

John Eaton,  
President of both Companies.

John M. Sands,  
Vice-president & Treasurer.  
R. H. Herron Co.

Main Office:  
Los Angeles, Cal.

Branches:  
San Francisco, Cal.  
Coalinga, "  
Bakersfield, "  
Orcutt, "  
Maricopa, "  
McKittrick, "  
King City, "  
Midway "

Machine and Forge Works:  
Los Angeles and Coalinga.

**R. H. HERRON CO.**

Affiliated with  
**OIL WELL SUPPLY CO.**  
of

Pittsburgh, Pa.

Taft, Calif., Nov. 25th, 1910.

John M. Sands General Manager,

R. H. Herron Company.

Los Angeles, Calif.

Dear Sir:—

The Cleveland Oil Co. returned the Pumps of which you wrote this morning. One of them is pretty badly stripped of parts, and we are told that the Consolidated Midway Co. or someone else will give us an order for the parts needed as soon as we can inspect the pumps and find out just what is wanted. This we will do at once, and will put them in shape to dispose of. Are we to give the Cleveland Oil Co. credit for the pumps, and place them in our stock, or will you attend to that.

Yours truly,

J. L. SCOTT. [146]

[Letter Dated December 20, 1910, from New York-Midway Oil Company to the Stockholders of the Cleveland Oil Company.]

[In pencil:] 1260.

G. E. Averill, President.  
M. P. Waite, Vice-president.

C. C. Spicer, Treasurer.  
M. Kinney, Secretary.

File with Cleveland Oil Co.

NEW YORK MIDWAY OIL COMPANY.

Phones Main 4931.

F-5495.

603 W. P. Story Building.

Los Angeles, Cal.

Los Angeles, Cal., Dec. 20, 1910.

To the Stockholders of the Cleveland Oil Co.

Gentlemen:

The New York-Midway Oil Company was recently incorporated with a capital of \$1,250,000 under the laws of the State of California by several of the larger stockholders of the Cleveland Oil Company. The object of this company is to acquire the property of the Cleveland Oil Company upon some basis fair to the bondholders, the creditors and the stockholders of the Cleveland Oil Company. All of the stock of this company is in its treasury. We have concluded arrangements with practically all of the bondholders by which this company will acquire all of the bonds of the Cleveland Oil Company, amounting to \$100,000, for about 300,000 shares of stock.

The Cleveland Company owes, in addition to its bond issue, about \$50,000 to general creditors. There are now pending, three suits against the Cleveland Company, involving the payment of various sums of

money and also involving the title to some of the company's leases. It is the intention of the New York-Midway Oil Company to settle with all these creditors, to adjust all matters now in litigation and to save to the individuals who are the stockholders of the Cleveland Oil Company the equity which they now have in their property.

In order to accomplish these purposes the New York-Midway Oil Company hereby offers for a period of thirty days to each stockholder of the Cleveland Oil Company the privilege of [147] exchanging his stock, for stock in the New York-Midway Oil Company upon a basis of ten shares of Cleveland for one share of New York-Midway, and of purchasing an additional amount of stock in the New York-Midway Oil Company equal to his original holding of Cleveland, upon the payment of ten cents per share; this payment to be made in four equal monthly installments. After this plan has worked out the New York-Midway Oil Company will own all the bonds of the Cleveland property, it will have settled all of the debts of the Cleveland Company, and will own all of the stock of the Cleveland Company.

Very truly yours,

NEW YORK-MIDWAY OIL COMPANY.

By M. KINNEY, Secretary. [148]

**[Order of Court Confirming Report of Referee.]**

At a stated term, to wit, the January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court-room thereof, in the city of Los Angeles, on Monday, the 20th day of January, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 686—BKCY. S. D.

In re CLEVELAND OIL COMPANY, Bankrupt.

This matter coming on at this time to be heard on a review of the order of the Referee in bankruptcy herein disallowing the claim of R. H. Herron & Company for \$14,804.32, unless said claimant should surrender and pay to the trustee in bankruptcy herein the sum of \$5,123.37, paid to it as a preference, together with interest as specified in said order; Geo. E. Whitaker, Esq., appearing as counsel for R. H. Herron & Company, Lorin E. Crenshaw, Esq., appearing as counsel for the trustee in bankruptcy; and said matter having been argued, on behalf of R. H. Herron & Company by Geo. E. Whitaker, Esq., of counsel for said creditor, and on behalf of the trustee by Lorin E. Crenshaw, Esq., of counsel for said trustee, and on behalf of R. H. Herron & Company by Geo. E. Whitaker, Esq., of counsel for said creditor, and the report of the Referee herein having thereupon been submitted to the Court for its



consideration and decision; it is now by the Court ordered that the report of the Referee in bankruptcy concerning this matter be, and the same hereby is confirmed, to which ruling of the Court, on motion of Geo. E. Whitaker, Esq., of counsel for R. H. Herron & Company, exceptions are, by direction of the Court, hereby noted herein on behalf of said R. H. Herron & Company. [149]

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**[Petition for Appeal and Order Allowing Appeal.]**

*In the District Court of the United States, for the Southern District of California, Southern Division.*

No. 686—IN BANKRUPTCY.

In the Matter of the CLEVELAND OIL COMPANY, Bankrupt.

PETITION ON APPEAL OF THE R. H. HERRON COMPANY, A CORPORATION, A CREDITOR OF THE CLEVELAND OIL COMPANY, A CORPORATION, BANKRUPT.

The above-named R. H. Herron Company, a creditor of the Cleveland Oil Company, a corporation, bankrupt, considering it is aggrieved by the judgment and order made and entered on the 20th day of January, 1913, in the above-entitled cause, does hereby appeal from such judgment and order to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and the said R. H. Herron Company prays that this appeal may be allowed, and that a transcript of the records,

proceedings and papers upon which said judgment and order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

GEO. E. WHITAKER,

Attorney for the R. H. Herron Company, a Corporation, Creditor of the Cleveland Oil Company, a Corporation, Bankrupt.

The foregoing claim of appeal is allowed.

Dated January 30th, 1913.

OLIN WELLBORN,

District Judge.

[Endorsed:] No. 686. In the District Court of the United States for the Southern District of California, Southern Division. [150] In the Matter of the Cleveland Oil Company, Bankrupt. Petition for Appeal and Order Allowing Appeal. Filed Jan. 30, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Jan. 30, 1913. Rec'd Copy, Hickcox & Crenshaw, Attys. for Trustee. Geo. E. Whitaker, Stoner Block, Bakersfield, Cal., Attorney for R. H. Herron Co. [151]

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[Assignment of Errors on Appeal.]

*In the District Court of the United States, for the Southern District of California, Southern Division.*

No. 686—IN BANKRUPTCY.

In the Matter of the CLEVELAND OIL COMPANY,

Bankrupt.

And now on this the 30th day of January, 1913, came the R. H. Herron Company, a creditor of the Cleveland Oil Company, a corporation, bankrupt, by Geo. E. Whitaker, Esq., its attorney, and says that the judgment and order rendered and made in said cause confirming the findings and decree of Lynn Helm, Esq., Referee in bankruptcy for the county of Los Angeles, and adjudging that the said R. H. Herron Company had received preferences from said bankrupt while a creditor thereof, and had reasonable cause to believe that the said Cleveland Oil Company, a corporation, was insolvent at the time of the payments and transfers made by said Cleveland Oil Company to said R. H. Herron Company and objected to by said trustee, is erroneous and against the just right of the said R. H. Herron Company, and it assigns the judgment and order of said District Court so rendered and made as erroneous and against its just right in that it was adjudged that:

FIRST.—That the evidence adduced before said Referee at the hearing of the objections made to the allowance of the claim presented and filed by the said R. H. Herron Company, against the estate of said Cleveland Oil Company, a corporation, bankrupt, showed that a preference was received by the said R. H. Herron Company.

SECOND.—That said Court erred in finding that the said R. H. Herron Company had reasonable cause to believe that it was intended thereby to give a preference to it by the payment [152] of the moneys and the transfers of material in the amounts and at the times set forth and objected to by said

trustee; and in affirming the findings and decree of said Referee in that respect.

THIRD.—That said Court erred in finding from the evidence that the said R. H. Herron Company received any preference by reason of any payments of money or transfers of material, and in affirming the findings and decree of the Referee in that respect.

FOURTH.—That said Court erred in finding that any payments or transfers made to the said R. H. Herron Company by said bankrupt were preferences for any amount, and in affirming the findings and decree of said referee in that respect.

FIFTH.—That said Court erred in ordering said R. H. Herron Company to pay the sum of \$5,123.37, or any sum at all, to the trustee before its said claim for \$14,804.32 as filed be allowed, and in affirming the findings and decree of said Referee in that respect.

SIXTH.—That said Court erred in its conclusions of law and in affirming the conclusions of law found by the Referee from the evidence given at the hearing had before him in said matter.

WHEREFORE, the said R. H. Herron Company prays that the said judgment and order may be reversed and that it be ordered, adjudged and decreed by this Honorable Court that the said R. H. Herron Company received no preferences whatever from said bankrupt, and that the claim filed by it against the estate of said bankrupt be ordered allowed in full.

GEO. E. WHITAKER,

Attorney for said R. H. Herron Company.

[Endorsed:] No. 686. In the District Court of the United States [153] for the Southern District



of California, Southern Division. In the Matter of the Cleveland Oil Company, Bankrupt. Assignment of Errors on Appeal. Filed Jan. 30, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Jan. 30, 1913. Rec'd copy, Hickcox & Crenshaw, Attys. for Trustee. Geo. E. Whitaker, Stoner Block, Bakersfield, Cal., Attorney for R. H. Herron Co. [154]

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[Bond on Appeal.]

*In the District Court of the United States, for the Southern District of California, Southern Division.*

No. 686—IN BANKRUPTCY.

In the Matter of the CLEVELAND OIL COMPANY,

Bankrupt.

KNOW ALL MEN BY THESE PRESENTS: That we, R. H. Herron Company, a corporation, as principal, and R. J. White and Martin Gundlach, as sureties, are held and firmly bound unto Wm. H. Moore, Jr., trustee in bankruptcy of the Cleveland Oil Company, a corporation, bankrupt, in the full and just sum of Five Hundred Dollars (\$500.00), to be paid to the said Wm. H. Moore, Jr., trustee as aforesaid, his certain attorneys or successors in interest; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of



January, in the year of our Lord one thousand nine hundred and thirteen.

WHEREAS, lately at the District Court of the United States, for the Southern District of California, Southern Division, in the hearing of the petition by the R. H. Herron Company, a corporation, for a review of the findings and decree of Lynn Helm, Esq., referee in bankruptcy for the county of Los Angeles, in the matter of a claim filed by the said R. H. Herron Company, a corporation, against the estate of the Cleveland Oil Company, a corporation, bankrupt, wherein the said referee in bankruptcy had disallowed said claim upon the ground of the said R. H. Herron Company having received a [155] preference while a creditor of said Cleveland Oil Company, bankrupt, a judgment and order was rendered and made by said court in favor of Wm. H. Moore, Jr., trustee of said bankrupt, and against the said R. H. Herron Company, and affirming the findings and decree of said referee in bankruptcy in said matter, and the said R. H. Herron Company having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the judgment and order in the aforesaid matter, and a citation directed to the said Wm. H. Moore, Jr., trustee of said Cleveland Oil Company, a corporation, bankrupt, citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to be holden at the city of San Francisco in said Circuit, on the 28th day of February next.

Now, the condition of the above obligation is such

that if the said R. H. Herron Company shall prosecute its appeal to effect, and answer all damages and costs if it fails to make its appeal good, then the above obligation to be void; else to remain in full force and effect.

R. H. HERRON COMPANY (Principal).

By GEO. E. WHITAKER,

Its Attorney in Fact.

R. J. WHITE (Surety).

MARTIN GUNDLACH (Surety). [156]

State of California,  
County of Kern,—ss.

R. J. White and Martin Gundlach, the sureties whose names are subscribed to the above undertaking, being duly sworn, depose and say: That they are each residents and householders within the State of California, and are each worth the sum specified in the said undertaking as the penalty thereof, over and above all their just debts and liabilities, exclusive of property exempt from execution.

R. J. WHITE.

MARTIN GUNDLACH.

Subscribed and sworn to before me this 29 day of January, 1913.

[Seal]

J. A. HERPEL,

Notary Public in and for the County of Kern, State of California.

Approved by:

OLIN WELLBORN,

United States District Judge, this 30th day of January, 1913.

[Endorsed]: No. 686. In the District Court of the United States for the Southern District of California, Southern Division. In the Matter of the Cleveland Oil Company, Bankrupt. Bond on Appeal. Filed Jan. 30, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Jan. 30, 1913. Rec'd copy, Hickcox & Crenshaw, Attys. for Trustee. Geo. E. Whitaker, Stoner Block, Bakersfield, Cal., Attorney for R. H. Herron Co. [157]

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[Praeceptum for Transcript.]

UNITED STATES OF AMERICA.

*District Court of the United States, Southern District of California.*

Clerk's Office.

No. 686—BKCY.

In the Matter of the CLEVELAND OIL COMPANY, a Corporation,

Bankrupt.

To the Clerk of Said Court:

Sir: Please issue certified transcript of record in said matter to consist of transcript of testimony taken on hearing of claim of R. H. Herron Company before referee on the 24th of July, 1912; letters introduced in evidence on said hearing, decree of the referee, order of the United States District Court confirming the decree, statement of account (not the bills) which the R. H. Herron Company filed in support of its claim against the bankrupt, petition for

appeal, bond on appeal, assignment of errors, to be certified under the hand of the clerk and the seal of the Court.

GEO. E. WHITAKER,

Attorney for R. H. Herron Co., Appellant.

[Endorsed]: No. 686—Bank. U. S. District Court, Southern District of California, Southern Division. In the Matter of the Cleveland Oil Co., Bankrupt. Praeceptum for Certified Transcript of Record. Filed Feb. 13, 1913, at 15 min. past 11 o'clock A. M. Wm. M. Van Dyke, Clerk. Virgil W. Owen, Deputy. [158]

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[Certificate of Clerk U. S. District Court to  
Transcript of Record.]

*In the District Court of the United States of America, in and for the Southern District of California, Southern Division.*

IN BANKRUPTCY—No. 686.

In the Matter of the CLEVELAND OIL COMPANY, a Corporation,

Bankrupt.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred and fifty-eight typewritten pages, numbered from 1 to 158, inclusive, and comprised in one volume, to be a full, true and correct copy of the Referee's Report on Petition for Review, the Testimony on the hearing of the claim



of R. H. Herron Company before the Referee, the Statement of Account filed by the R. H. Herron Company in support of its claim against the bankrupt, the letters introduced in evidence on said hearing, the Order of the Court Confirming the Report of the Referee, the Petition for Appeal, the Order Allowing the Appeal, the Assignment of Errors on Appeal, and the Bond on Appeal in the above and therein entitled matter, and that the same together constitute the record in said matter upon the appeal of R. H. Herron Company, a corporation, from the Judgment and Order of the Court Confirming the Report of the Referee in said matter as specified in the Praecipe filed [159] in my office on behalf of said R. H. Herron Company, a corporation, by its attorney of record.

I do further certify that the cost of the foregoing record is \$77.60, the amount whereof has been paid me on behalf of said R. H. Herron Company, a corporation.

In testimony whereof, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 19th day of February, in the year of our Lord one thousand nine hundred and thirteen and of our Independence the one hundred and thirty-seventh.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California. [160]



[Endorsed]: No. 2254. United States Circuit Court of Appeals for the Ninth Circuit. R. H. Herron Company, a Corporation, Appellant, vs. William H. Moore, Jr., Trustee in Bankruptcy of the Cleveland Oil Company, a Corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Received March 12, 1913.

F. D. MONCKTON,  
Clerk.

Filed March 13, 1913.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals, in  
and for the Ninth Circuit.*

IN BANKRUPTCY—No. 686.

In the Matter of the CLEVELAND OIL COM-  
PANY, a Corporation,

Bankrupt.

**Stipulation Extending Time to File Transcript.**

IT IS HEREBY STIPULATED by and between Messrs. Hickcox & Crenshaw, attorneys for William H. Moore, Jr., trustee in bankruptcy of the Cleveland Oil Company, a corporation, bankrupt, and George E. Whitaker, attorney for R. H. Herron & Company, a corporation, that the claimant, R. H.

Herron & Company, may have up to and including the 15th day of March, 1913, in which to file the Transcript on Appeal in the above-entitled proceeding.

Dated February 25, 1913.

ROSS T. HICKCOX,

L. O. CRENSHAW,

Attorneys for William H. Moore, Jr., Trustee in  
Bankruptcy of the Cleveland Oil Co., Bankrupt.

GEO. E. WHITAKER,

Attorney for R. H. Herron & Company.

Dated San Francisco, California, February 27,  
1913.

So ordered:

WM. B. GILBERT,

Senior United States Circuit Judge for the Ninth  
Circuit.

[Endorsed]: 2254. In the United States Circuit Court of Appeals, in and for the Ninth Circuit. In Bankruptcy—No. 686. In the Matter of the Cleveland Oil Company, a Corporation, Bankrupt. Stipulation Extending Time to File Transcript. Filed Feb. 27, 1913. F. D. Monckton, Clerk. Refiled Mar. 13, 1913. F. D. Monckton, Clerk.

